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Diplomarbeit

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The Efficiency of EU Anti-Discrimination Legislation

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Examined on the Basis of its Evolutionary Process and Impact on anti-Gypsy
Discrimination and Romani Social Exclusion in the EU

Verfasser

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1. Introduction

1.1 Research Question, Method and Structure

The central focus of the diploma thesis is to analyze the efficiency of EU anti-discrimination legislation. This is to be accomplished by examining two dimensions: First, a retracement of the evolution of anti-discrimination law, and second its practical impact on the discrimination and social inclusion of the European Romani minorities. The author of this thesis believes that the answer to the question of how EU anti-discrimination legislation came into being will also reveal further insight to the question to which degree EU anti-discrimination legislation can have an impact on the lives of underprivileged minorities. Hence, the overall research question of the diploma thesis is: Is EU anti-discrimination legislation efficient, evaluated by means of its evolutionary process and impact on anti-Gypsy discrimination and Romani social exclusion?

The main part of the thesis will be conducted methodically the following way: The first dimension (chapter 3.1) will be a literature review about the evolution of EU anti-discrimination law. It will provide the reader with a sophisticated idea about the political reasons for the implementation of anti-discrimination legislation. It also gives a suggestion to what extent this legislation was implemented to bring about real change on the issue of discrimination against minorities, and to what extent its development was merely of symbolic value. This part will be primarily based on literature from Mark Bell (c.f. Mark Bell 2004 and 2008) and primary sources such as Directives of the European Council, EC Treaties, case rulings from the European Court of Justice and public statements of the European Commission.

The second dimension (chapter 3.2), subsequent to the review of the evolution of EU anti-discrimination law, will be an examination of literature, reports and surveys (from NGOs and EU organs) about racial discrimination against Romani people in the EU since the implementation of the 2000 Racial Equality Directive (European Council Directive 2000/43/EC 29.06.2000). The goal is to find out about whether the

introduction of the anti-discrimination law led to positive changes regarding discrimination against Romani people and their social exclusion. EU Member States which either have a significant number of Romanies (like Rumania, Bulgaria, Slovakia, Hungary and the Czech Republic) known to be suffering under discrimination and social exclusion (c.f. Arno Tanner 05.2005), and countries that were exposed in literature, reports, surveys or the media conducting explicitly anti-Gypsy policies, will be evaluated.

The author of this thesis is aware of the fact that these are the strongest examples of anti-Gypsy discrimination and exclusion, and are not representative for all EU Member States. The issue is extremely complex and manifold, and that Romanies live under very different conditions in different parts of the continent. However, the goal of this thesis is to expose, via the method of literature review, to what extent EU anti-discrimination legislation is able to help the weakest citizens and inhabitants of the EU. Hence, the concentration on such strong cases of discrimination and social exclusion against Romanies is not only a proper method to grasp the issue of analyzing the practical impact of EU anti-discrimination legislation in those cases where national anti-discrimination measures fail. It is also a method that can be conducted within the strict realms of a diploma thesis, time-wise and with regard to limited funds.

In order to give a qualitative evaluation of the efficiency of EU anti-discrimination legislation, the author of this thesis considers it necessary to give an introduction into the history of discrimination against the Romani people in Europe (chapter 2) before the evolution of EU anti-discrimination law and its impact on Romani discrimination and social inclusion can be examined. This will include a theoretical description of the particularities of racism against Romani people, also known as anti-Gypsyism. A more detailed understanding of Romani discrimination, put into its historical context, helps to comprehend the deep-rootedness of the phenomenon. It will also help to explain why Romani people were chosen as examination objects, and exemplify why efficient EU anti-discrimination legislation is needed.

The chapters about the history of anti-Gypsy discrimination are based on literature from Volker Hedemann (c.f. Volker Hedemann 2007), who focuses on the

historical continuity of anti-Gypsyism, and Wolfgang Wippermann (c.f. Wolfgang Wippermann 1997), who analyses the development of anti-Semitism and anti-Gypsyism in Europe from the 15th century until today. The analysis of the structure and root of anti-Gypsyism in Europe bases on literature from Anneke Winckel (c.f. Anneke Winckel 2002) and Severin Strasky (2006), whose works also offer psychological insights.

One assumption drawn at this early stage of the thesis is that integration of the Romani people into European society can only be successful if a comparable sensitivity towards anti-Gypsyism is developed among Europeans and European institutions as it is already the case towards anti-Semitism. Regarding a sensitization about anti-Gypsyism, the majority of the European Union's citizens are completely ignorant. The author of this thesis assumes anti-discrimination law on its own to be rather inefficient, as long as large parts of European societies continue to feel repulsion towards Romani people (c.f. Eurobarometer Spezial 296 07.2008, p. 11).

Sensitivity and understanding towards negative repercussions and different forms of racism are essential in order to grasp the importance of anti-discrimination law. Only a broad understanding of racism and negative social effects of discrimination against a minority group offers a conclusive picture about what kind of anti-discrimination law is needed. Developing the background for a normative idea of what anti-discrimination law is supposed to accomplish is one objective of chapter 2.

Another hope is that if the development process of the legal instruments of EU-anti-discrimination law is examined, an evaluation of the EU's capabilities in critical scenarios like deportations based on ethnic stereotyping becomes comprehensible. At this early stage of the thesis it is assumed that anti-discrimination law is either not tough enough to stop discriminatory actions like the French coercive repatriation on the basis of ethnicity, or there is a lack of political will to consequently enforce EU anti-discrimination law against powerful countries like France and Italy. The verbal drawback of the European Commission after an initial plan to sue France for its actions, points in this direction (c.f. European Voice 30.09.2010).

1.2 Topic Introduction

The political fight against discrimination is supposed to be one of the European Union's fundamentals. In the Treaties of Rome it is stated in Article 7:

"Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited. The Council may, on a proposal from the Commission and after consulting the Assembly [European Parliament], adopt, by a qualified majority, rules designed to prohibit such discrimination" (Treaty of Rome, Article 7).

There is little surprise that in 1957 Europe it was not yet spoken about ethnic minorities and other groups that suffered discrimination. However, discrimination against national minorities was already seen as counterproductive to a united Europe with a shared market, in particular unequal pay between men and women, referred to in Article 119 in the Treaty of Rome. Anti-discrimination action played a role in the European Union from the beginning, although not necessarily only for humanitarian, but also economic reasons (c.f. Mark Bell 2004, p. 7).

Presently, more than a decade after the introduction of the Racial Equality Directive, anti-discrimination law is further developed and continuously pushes the realms of its application. In the Treaty of Lisbon it says under Title 1/Article 2:

"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail" (The Treaty of the European Union, Article 2[1A], p. 3).

In addition, in Article 3 of the Lisbon Treaty the following is stated:

"It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child."

As one can see, this EU policy field has come a long way. There is a decisive disparity between anti-discrimination law protecting national minorities, which have their origin in other EU Member States (like the German minority living in Austria) and anti-discrimination policy against vulnerable groups such as ethnic and racial

minorities (which are those with a cultural or racial origin perceived as originating outside the EU). The first approach is, to a great degree, backed by economic justification, while the latter primarily bases on arguments of humanity, ethics and post-nationalism.

In comparison with other legislation fields such as labor market and economic integration, EU anti-discrimination law for the protection of underprivileged minority groups in the EU is less developed. That is because it is a branch of social policy, which does not enjoy an equally rapid and distinct development as economic integration (c.f. Mark Bell 2004, p. 1). The EU's influence on anti-discrimination law can roughly be assumed as to be restricted to the before mentioned Articles in the Union's treaties, directives that have to be implemented into national law before taking effect, and declarations of different EU institutions, in particular the European Commission and the European Parliament. Hence, a discrepancy between the normative aspiration of anti-discrimination law as a fundamental value of the European Union, and the practical reality of anti-discrimination law seems likely. Of course, anti-discrimination law is not the only field where such discrepancies occur.

Nevertheless, there has been a lot of change in the area of social and anti-discrimination legislation within the last two decades. One apparent example for this fact is that discrimination against Romani people is no longer neglected by EU institutions (c.f. European Commission - Employment, Social Affairs and Inclusion 21.01. 2010), and a multitude of measures and policy programs were introduced in their favor. The question, which should be asked at this point, is how efficient anti-discrimination law really is these days.

The basic literature used to explore the evolution process of EU anti-discrimination law and the reveal of its driving actors and their motivations will come from Mark Bell, Professor at the University of Leicester, who published the book "Anti-Discrimination Law and the European Union" in 2004, which delivers a detailed description of the events that led to today's comprehensive EU anti-discrimination legislation. Mark Bell updated the insights of his book from 2004 with a report he published four years later for the European Network against Racism (ENAR) (c.f. Mark Bell 26.03.2008). Together, these two sources comprise the backbone of the chapter about the evolution of EU anti-discrimination law, in addition to primary

sources like the EC Treaties and rulings, public statements and directives from the European Council, the European Commission and the European Court of Justice.

At this point the question may come up, why the focus is on Romani people? The subject of discrimination against the Romanies is one that has attracted increasing attention within the last two decades. Romani people lack a country of their own, and live dispersed in many European countries. They are not only Europe's biggest ethnic minority group with an estimated population of 10 to 12 million people, but also one of her most disadvantaged (c.f. European Commission – Employment, Social Affairs and Inclusion 03.02.2011). Discrimination against and social exclusion of Romani people is a phenomenon one can find to a greater or lesser extent in every member state of the European Union. Over time, it became an issue in all major EU institutions, the Commission, the Council the Parliament and the Courts in particular. Today, European social projects concerning the Romanies are primarily coordinated by the European Commission on Employment, Social Affairs and Equal Opportunities (c.f. European Commission - Employment, Social Affairs and Inclusion 21.01. 2010).

It is not surprising that the topic of discrimination against Romani people makes up a bulk of the general subject of ethnic discrimination in the EU these days. Indeed the level of anti-Gypsy hatred, a principal source for discrimination against Romanies, is peerless in Europe:

"Of all the groups surveyed by the FRA [European Union Agency of Fundamental Rights] the Roma emerge as the most vulnerable to discrimination and racist crime. Roma reported the highest levels of discrimination, with one in two respondents saying that they were discriminated against in the last 12 months" (c.f. Gallupp 21.01.2011).

The existence of discrimination against Romanies is broadly acknowledged. Today politicians and scientists dispute over the question how they can be better integrated into society, how their living standards can be raised, how to improve their educational standard, and so on. There is no doubt within the EU-elite that hatred against Romani people is a wide spread phenomenon that needs to be dealt with: "[Their] situation is characterised by persistent discrimination and social exclusion" (European Commission – Employment, Social Affairs and Inclusion 03.02.2011).

For this diploma thesis it will be important to understand where hatred against Romanies is coming from, because it is a main source for discrimination in all levels of society. How deeply is it rooted, and which historical, social and psychological purposes does it serve? Only if one understands the pattern of anti-Gypsyism, it is possible to grasp the subject of anti-discrimination policy in a comprehensive manner. Equipped with this knowledge, the primary goal of this work, which is a qualitative assessment of the EU's anti-discrimination policy, should be possible to achieve.

1.3 Personal Motivation for the Topic Choice

There are several reasons why the subject of anti-discrimination policy and Romani discrimination was chosen for this diploma thesis. First of all, the subject of discrimination against the Romani people, or anti-Gypsyism, is a comparatively neglected field in the social sciences (c.f. Gesellschaft für Antiziganismusforschung 2011). On the other hand, as a result of World War II, the phenomenon of anti-Semitism is well explored. This is an understandable development, regarding the murder of six million Jews in Nazi-concentration- and -death camps. However, up to half a million Romani people were murdered in Europe during the Holocaust (c.f. www.bbc.co.uk 23.01.2009), a comparably large number if one takes into account that the Jewish population numbered ten million (c.f. United States Holocaust Memorial Museum 06.01.2011) and the Romani population was only one million (c.f. United States Holocaust Memorial Museum 07.01.2011) in prewar Europe. In order to further extend sensitivity and perception about the subject, it seems important to extend research and information flow about racism and discrimination against Romani people. Indeed, anti-discrimination policy and law becomes a very lively and even emotional subject when applied to the suffering of Europe's biggest stateless minority group. The author of this thesis believes that only if the horrible effects of racism against Romani people in history and contemporary time are further explored, people will understand how important efficient anti-discrimination law and policy are.

Second, the field of anti-discrimination policy in the EU appears to be in the state of continuous and rapid development as a result its complex and complicated nature, which will be further explicated later in this thesis. The fact that it is claimed to be one of the European Union's fundamentals does not change this matter. On the one hand, this complexity makes it difficult to deal with, because clear and unequivocal information about the topic is not easy to find. On the other hand, it makes anti-discrimination policy and law a field in which research promises new insights even within the limited scope of a diploma thesis.

The author of this thesis believes that if the European Union is to be more than an economic project, a move towards tough, efficient and comprehensive laws against the discrimination of minorities is necessary. Contributing to the intensification of efforts in the field of anti-discrimination law in the EU via verification is one of the central motivations for this thesis.

2. The Deep-Rootedness of anti-Gypsyism in Europe

This chapter will provide a historical and socio-psychological analysis of the social and economic exclusion of Romani people. It will help to make the deep-rootedness of anti-Gypsyism in European society more comprehensible. The chapter starts with explanations of several terms in relation to the topic. Words like "Romani", "Gypsy" and "anti-Gypsyism" are far from being self-explanatory, but contain a large bag of associations and disputes.

The author of this thesis believes that the explanation for the persistence of anti-Gypsyism in individual persons is also an indication for the persistence of anti-Gypsyism in whole societies. Hence, chapter 2.2 about anti-Gypsyism will include a socio-psychological approach. It draws on the psychoanalytical explanatory model for anti-Semitism, the authoritarian character. The theory will be extended to the phenomenon of anti-Gypsyism, which also makes clear the differences between both forms of racism.

The history of anti-Gypsy discrimination will be distinguished in three phases. The first phase starts with the historical immigration of Romanies in Europe and ends with the beginning of the 20th century. The second phase explicates the experience of Romanies during the Holocaust. The third phase begins with the post-Second World War era in order to reveal the continuity of anti-Gypsyism after the extermination policies of the National Socialists. Although the third phase already deals with a time period of existing anti-discrimination legislation in the European Community, the latter is very rudimentary and does not yet affect Romani people. During this time period, national Member States' anti-discrimination law is the only de facto legislation. Hence, sub- chapter 2.5 is not used for insight into the impact of EU anti-discrimination legislation, but instead only to reveal the continuity of discrimination on the part of European national states.

2.1 Terminological Basics

In order to be able to understand the history of the Romani people, the social and political role they played within European countries and the particular racism they face, it is necessary to determine several term definitions with respect to the topic. To get to know about the meanings and connotations of words like "Gypsy", "Roma", "anti-Gypsyism" and "Porajmos" also delivers a first impression about the particularities of Europe's biggest stateless minority. Furthermore, it must be clearly understood why certain terms concerning Romanies are not used in this thesis and why others are used, perhaps with reservations.

The best known expression in the English language for the Romani people in Europe is "**Gypsy**", more or less the equivalent to the German "ZigeunerIn" and other European descriptions of Romanies with a similar word root. Gypsy is related to the word Egyptian, probably because it was believed that they originally came from Egypt. In fact, Romanies are primarily of Indian origin and moved westwards hundreds of years ago. During this migration process they split up and developed all kinds of different identities (c.f. Ian Hancock 2001, p. 2). The term "Gypsy" is associated with stereotypical negative (and a few positive) connotations, alike its equivalents in other European language, which are mostly related with the German vilification "ZigeunerIn". The term "Gypsy" is considered discriminative nowadays, and in this diploma thesis it will exclusively be written enclosed in brackets.

It is necessary to stress the fact that a "Gypsy" is not an actual Romani person. "Gypsy" is a set of stereotypes, which is primarily projected on groups with Romani background. The same way as anti-Semites possess a set of racist stereotypes towards Jews, the anti-Gypsyist constructs his or her individual image of a "Gypsy", which has little in common with real Romani people.

Roma and Sinti is a double term often used as a politically correct substitute for "ZigeunerInnen" in German speaking countries. Sinti are a subdivision of the "Gypsies", who have lived in Europe's German speaking areas for already several hundred years. They reject the denotation Romani, and point at their own history and tradition.

The double term Roma and Sinti as it is utilized in Austria, or Sinti and Roma, which is Germany's slight variation of the political term, will find no use in this thesis for several reasons. First of all, it is a term that stresses two particular subdivisions, despite the fact that there are many more groups with other names and identities than just Romani and Sinti. People who are referred to as "Gypsies" in a negatively connoted way distinguish themselves *inter alia* by geographical location, clan, religion and/or profession. As a result there is an inscrutable entanglement of self-designations (c.f. Gernot Haupt 2006, p. 24). A neutral term has to be picked in an arbitrary manner in order to not take over the terminology of anti-Gypsy racism, but the word Sinti only refers to a particular group in Germany. Hence, it will not be further considered as too German-centered.

The term used in this thesis will be **Romani**, used as a noun as well as an adjective, which is only a bad compromise. As mentioned before, Romanies, Sinti and many other groups that are commonly denounced as "Gypsies" all have their own identities. Referring to all of them with a single term is problematic, maybe even offensive to a certain degree. However, it is still the best working solution considering the fact that it would be impossible to list all the different names of particular Romani identities as a substitute for "Gypsies".

Using the most widely spread substitute for "Gypsies" that comes without any obvious or directly negative connotation is the least of all bad solutions the author of this thesis has knowledge of. Up to this point it must be sufficient that the diverse identity of Romani people was mentioned and will be further explained in this chapter.

The second reason is that Romani is a gender neutral term, while Roma only refers to the men of this minority group. It is surprising in times of aspired gender equality, that the male word Roma is the most used in social science and the European Union's institutions (c.f. The Economist 18.-24.09.2010, p. 66).

There will be an additional segment about **anti-Gypsyism** in this chapter. At this point it should suffice to give a short introduction to the purport of this word. Anti-Gypsyism and especially its German equivalent "Antiziganismus" are terms that arouse an association with anti-Semitism. While the latter is a well researched phenomenon of European-Christian tradition, anti-Gypsyism is rather neglected in the academic world, with a few commendable exceptions (c.f. Anneke Winckel 2002).

In order to correctly estimate the extent of racism and discrimination towards Romani people it is necessary to expose oneself to Europe's history of genocide. Without taking into consideration the horrors during the Second World War, the contemporary situation of Romani people in many parts in Europe would not be understandable.

Holocaust is the very well known term for the mass murder of six million Jews by the Nazi regime and its collaborators during the Second World War. During the same time period hundreds of thousands of “Gypsies” were also murdered by the Nazi’s industrial murder machinery. Unfortunately, for some scholars it is disputed whether the term Holocaust also applies to other victim groups of the Nazi genocide than only Jews (c.f. Gernot Haupt 2006, p. 148-149). In this context, it should be stressed that the Nazis classified people only in fictional racial terms, but the murder of non-Jews who were perceived as Jews are definitively included in the term.

The question is whether the Holocaust, by definition, does include the murder of people who were killed by the Nazis for other reasons than being Jewish. In fact, there is a Romani term for the genocide of all people who were murdered for being “Gypsies”: “**Porajmos**”, which literally means “devouring” (c.f. The Forgotten Holocaust – Roma and Sinti, 2008).

However, when people write about the Nazi genocide they often use the word Holocaust for all victims, and even among Romanies the word Porajmos is not a generally accepted and used word. In this thesis it seems proper to utilize the term Holocaust for all victims of the Nazi’s extermination industry.

2.2 Anti-Gypsyism

If one assumes that anti-discrimination law is implemented as a countermeasure to racial discrimination (in order to verify an impact of anti-discrimination law) one first has to learn about the particular forms of racism and racial discrimination anti-discrimination law is supposed to counteract. Anti-Gypsyism has its very own structure and set of stereotypes, similar to the phenomenon of anti-Semitism, and it is hundreds of years old and deeply rooted in the minds of many

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Europeans. The particularities of anti-Gypsyism are to a great deal responsible for the specific social and economic living conditions Romani people have to endure in many European countries. According to the website of the British government, racial discrimination means "to discriminate against you on racial grounds" (directgov 08.02.2011). Inferred from this, anti-Gypsyism (or anti-Gypsy hatred) is assumed to be the primary root of discrimination against Romani people. At the end of this chapter, there will also be a short analysis of the psychological aspects of anti-Gypsyism, to give another argument for the deep-rootedness of this particular form of racism, and in order to suggest that anti-discrimination law by itself probably does not suffice to decisively diminish anti-Gypsy discrimination.

As mentioned before, it is not a coincidence that anti-Gypsyism is a word causing an association with anti-Semitism. Both are particular forms of racism, which are different than other forms of hate. The same way there are different stereotypes (negative and positive ones alike) about particular groups and people, there are also different forms of aggression pointed at them. The particularities of hatred against Jews have been a subject in academic circles since the 18th century. After World War II, the subject came to the top of many scholars' agenda all over Europe, with Sean-Paul Sartre publishing his thoughts about anti-Semites and Jews in 1946 being one of the most famous examples (c.f. Jean-Paul Sartre 1995). Although the Romani people went through an equally dreadful history of social exclusion, persecution and genocide as Jews, anti-Gypsyism had not become a scientific research topic until the 1980's.

Nowadays, anti-Gypsyism is a research topic in the "Zentrum für Antisemitismusforschung" at the Technical University Berlin (c.f. Zentrum für Antisemitismusforschung 21.01.2011), which indicates how much these two phenomena have in common. Indeed, for a better understanding it is helpful to compare anti-Gypsyism and anti-Semitism and carve out similarities and differences.

In order to compare anti-Semitism and anti-Gypsyism, it first has to be clear what kind of anti-Semitism is referred to, since different forms were developing within the last centuries in European history. Large-scale anti-Semitism started as a Christian hatred against Judaism, and is therefore referred to as anti-Judaism. During the 18th and 19th century, traditional anti-Judaism turned into modern secular anti-

Semitism. Jews were no longer perceived as a people with just a different history and tradition. Instead, biological and naturalistic ideologies became predominant.

This “racial component” made Jews allegedly uneducable and their integration into Christian society impossible. Beforehand Jews could at least convert to Christianity and escape the rage of the anti-Semite. In “Anthropologie in pragmatischer Sicht” from 1798 Emanuel Kant depicts Jews as a morally depraved alien nation, and a baneful foreign body of deceitful traders (c.f. Severin Strasky 2006, p. 72-73).

These anti-Semitic stereotypes resembled anti-Gypsy stereotypes in many ways. “Gypsies” were perceived as a people of traders too. Similar to Jews, it was thought that “Gypsies” were cursed for eternal wanderings and restlessness. They were accused of spying, witchcraft, deception and thievery (c.f. Severin Strasky 2006, p.133-134). Similar to the developments regarding the Jewish minority, attempts to “reeducate the Gypsies” turned into repressive policies that cast out the Romani from the public majority. At the turn from the 18th to the 19th century the historian Heinrich Grellman from Göttingen characterized the “Gypsies” as an Oriental people of thieves, spies, murderers of children, cannibals, addicted to alcohol and tobacco, dirty, lazy, excessively sexually active and inclining to prostitution, alien to the own racial corpus. During the 19th century, the “Gypsies” were more and more perceived as human beings of an inferior stage of development, and despite the fact that most Romanies followed the Christian belief it was widely believed among common people that “Gypsies” were in league with the devil (c.f. Severin Strasky, p.135).

At the turn of the 18th to the 19th century one of the most important developments shaping the form of anti-Gypsy hatred occurred. It was the beginning of the so-called “Gypsy-Romanticism”. During this era the “Gypsies” were, in positive and negative images and stereotypes alike, devised as the ultimate anti-modern people and associated with magicians, witches and the devil (c.f. Severin Strasky 2006, p. 136).

In modern secular thought the “state of nature” is a state of war, anarchy and lawlessness. It is the opposite of the romanticized picture of pre-modernism, which might be thought of as Adam and Eve’s paradise, a location of maximum freedom,

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peace and fortune. In modern secular anti-Semitism the Jew became the incarnation of the horrors of modernization (c.f. Tobias Jaecker 2005, p. 23-24). Associated with an antiquated anarchic world that was romanticized and detested at the same time, the "Gypsy" on the other hand became the incarnation of the past, a world of chaos.

Furthermore, the governments of the new developing nation states used anti-Gypsy stereotypes in order to develop a scapegoat that could be used to "civilize the masses". Socio-economical elements also enhanced anti-Gypsy riots. The fact that itinerant traders were perceived as an unwelcome business competition by local traders did not help to improve the Romani's popularity (c.f. Tobias Jaecker 2005, p. 24).

Although the idea of "Gypsies" as a racial group has existed since the 18th century, anti-Gypsyism has always been a sociographic phenomenon (c.f. Severin Strasky 2006, p. 140). Anti-Gypsyism as a sociographic term means the stigmatization of rogues, vagrants, tramps and "work-shy" people. Sociographic and racial anti-Gypsyism cannot be seen as two different phenomena. They influence each other and are intertwined like secular anti-Semitism and Christian anti-Judaism. For this reason, any claim that the extermination of the Romanies did not happen for racial reasons must be wrong; one cannot be thought without the other.

A major difference between anti-Semitism and anti-Gypsyism is their historical development after the collapse of the German Nazi-regime. In 1950 a nationwide anti-anti-Semitism developed and found a great number of supporters in Germany, especially among the elite. By contrast an anti-anti-Gypsyism never appeared in public spheres or received any broader attention.

Volker Hedemann, lecturer of the Carl von Ossietzky Universität Oldenburg, presents an explanation for the different grades of awareness: First he stresses the fact that anti-Semitism was a high priority of the allied occupying powers of Western Germany. On December 15th 1949 the parliamentarian Hedler announced in a public party meeting:

"Man macht zu viel Aufhebens von der Hitlerbarbarei gegen das jüdische Volk. Ob das Mittel, die Juden zu vergasen, das gegebene gewesen sei, darüber kann man geteilter Meinung sein. Vielleicht hätte es andere Wege gegeben, sich ihrer zu entledigen" (Hedler 1949 in Volker Hedemann 2007, p. 34).

Hedler was immediately sued for these words, but the German law court threw out the case. This was the moment when international pressure, especially from the United States, increased decisively.

During the reeducation process of the occupying allied forces the Germans were confronted with Nazi war crimes and the extermination of the Jews. German sovereignty was at stake, and high commissioner McCoy from the United States declared the attitude of the Germans towards the Jews as the acid test of Germany's democracy (c.f. Volker Hedemann 2007, p. 34). As a result, the Germans presented themselves publicly as anti-anti-Semitic, although anti-Semitism was still flourishing in the private sphere.

Although "Gypsies" were at the beginning recognized as racially persecuted people, anti-Gypsyism never received much attention from the allied occupying forces. As a result, anti-Gypsyism could be found in the wording of the law and court decisions. So-called "Wiedergutmachungszahlungen" for Romani Holocaust victims were rejected with the argument that "Gypsies" were deported to Nazi concentration camps because of their social behavior.

It took 35 years after the end of World War II to scandalize the discrimination of "Gypsies" in public. On April 4th in 1980 a hunger strike was started by twelve former Roma internees of the concentration camp Dachau and one social worker, which provoked a large sized media echo worldwide (c.f. Volker Hedemann 2007, p. 242-243). It was the first time post world war Germany recognized the second largest victim group of the Nazi regime. With this a process of slow sensitization started.

One way to explain the psychological structure of secular modern anti-Semitism and secular modern anti-Gypsyism is by projection theory. Both anti-Semitism and anti-Gypsyism are caused by a conflict within the individual and not between individuals (c.f. Ernst Simmel 2002, p. 16). The anti-Semite projects his fear of modernization on the Jew, and the anti-Gypsyist projects his fear of a backward development on the "Gypsy". In Nazi Germany the Jews were declared an anti-race, the "Gypsies" defined as the race most mentally retarded. Both "races" were perceived as a destructing element to the German racial corpus, and Jews and "Gypsies" could not be reeducated in order to get integrated into German society. Therefore they had to be terminated.

“Gypsies” are still seen as inherently uncontrollable, undisciplined, wild and libidinal by anti-Gypsyists (c.f. Severin Strasky 2006, p. 181). The Jew on the other hand, through the eyes of an anti-Semite, is pictured as a reckless capitalist, a profiteer associated with money, banks, trade, stock markets and extortionate rates of interest: in fact all negative aspects that are considered part of the modern capitalist competitive society are projected on the Jew. He is also a materialist, an egoist, ruthless and avaricious (c.f. Tobias Jaecker 2005, p. 25). Of course, Jews were also seen as bolshevists and revolutionaries, but these used to be other negative stereotypes of modernism, and with the breakdown of the Soviet Union these stereotypes practically disappeared. From these sets of stereotypes towards Jews and "Gypsies" it can be referred (psychoanalytically speaking) that the two minority groups share the destiny to serve as a projection surface for the masses who externalize their own deficiencies (e.g. egoism and lack of discipline) and wishes (e.g. sexual desires and freedom).

Ljiljana Radonic, in addition, presents the assumption of anti-Semitism as a response to the capitalist society causing a daily humiliation (c.f. Ljiljana Radonic 2004, p. 54-55). However, if that was the case, why did anti-Semitism exist in pre-capitalistic and pre-modern societies? It seems far more likely that anti-Semitism is a response to development and changes in general, in every society, not only in capitalistic ones. Indeed, anti-Semitic pogroms in anti-capitalistic societies like the Soviet Union were not an exception

The affinity between anti-Semitism and anti-Gypsyism, and the similarly violent outbursts against Jews and “Gypsies” result from the fact that both are used as antagonists for defining the group’s own identity. Modernization is in a dialectic relationship with degeneration, which is why “Gypsies” and Jews were always among the most suffering victims of rampant violence during conflict situations and times of identity development in Europe. Both minorities served as scapegoats when new nations and states were being established, and whenever there has been social change, negative developments were likely blamed on Jews and “Gypsies” (c.f. Wolfgang Wippermann 1997).

One important question with regard to the topic of this thesis is why so many people are actually inclined to anti-Gypsyism. Like anti-Semitism, anti-Gypsyism has

been so stubbornly persistent over the centuries, because it serves a particular psychological need for anti-Gypsists, which will be explained at this juncture. Because of this fact, it seems even more unlikely that anti-discrimination law by itself is a sufficient method to fight the phenomenon of anti-Gypsy discrimination. In addition, the comprehension of the psychological aspect of anti-Gypsyism will be an important precondition for the search of anti-discrimination measures that could complement anti-discrimination law.

According to psychoanalytical theory, authoritarian personalities or characters are inclined to anti-Semitism (c.f. Ljiljana Radonic 2004, p. 56-57). An authoritarian personality is the result of authoritarian patriarchal parenting. Thereby it is not important whether the parenting is actually done by parents or parental substitutes. The role can be filled in by other parts of society, e.g. friends. An authoritarian personality possesses a weakly developed ego and failed super-ego integration.

An authoritarian character is constantly forced by an authoritarian father figure to suppress inner feelings and wishes, but his or her super-ego does not allow for criticism or attack against this authoritarian father figure. He or she learns to internalize external rules and orders without reflection or criticism. Suppression of inner hate against the authoritarian father figure, as well as suppression of inner wishes and feelings, leads to the situation that the authoritarian character desperately searches for a projection surface to channel his or her anger at, in order to find some relief from his or her distress (c.f. Ljiljana Radonic 2004, p. 68). Jews are such a popular target for projection, because anti-Semitic stereotypes describe them as powerful and evil at the same time. "Evil Jews" are the perfect projection surface for the authoritarian father figure (c.f. Ljiljana Radonic 2004, p. 68).

Although anti-Gypsy people do not hallucinate great overall power on "Gypsies" like anti-Semites do on Jews (c.f. Anneke Winckel 2002, p. 33), the theory of the authoritarian character can contribute to understand the phenomenon of anti-Gypsyism. The authoritarian personality looks for relief from his or her suppressions, and therefore looks for projection surfaces. Indeed, he or she is jealous of the "Gypsies", because the "Gypsies" appear to him or her as totally free of any form of suppression (c.f. Michael Krausnick/Daniel Strauß 2008, p. 97).

In the anti-Gypsyist's mind the "Gypsies" do whatever they want and go wherever they want; "Gypsies" are perceived child-like (c.f. Änneke Winckel 2002, p. 22). They are also described as emotional, unreliable, primitive, wild, irrational, and driven only by their basic instincts like an infant. The anti-Gypsyist assumes that "Gypsies" live in their own world free of rules and constraints and are therefore in possession of the delight and relief the authoritarian personality so badly desires. As a consequence, the "Gypsies" and their lifestyle are demonized and hated. In the same way as the presence of Jews is not necessary for anti-Semitism, the presence of Romanies is not needed for the hate phenomenon anti-Gypsyism (c.f. Änneke Winckel 2002, p. 21).

While Jews becomes the incarnated substitute for the suppressive side of the anti-Semite's authoritarian father figure, the "Gypsies" become the incarnation of the so badly desired freedom. This helps to explain why "Gypsies" and Jews experienced such a similar history of persecution in Europe, full of discrimination, exclusion, expulsion and pogroms, which culminated to the Romanies' and Jews' partly successful extermination by the National Socialists.

2.3 Historical Background – European Immigration and Romanticism

Discrimination of Romani people is not a phenomenon of the past few years, or even decades, but can be traced back to their immigration several hundred years ago. The European's perception of Romani people consists of a thought structure that developed over this time period. This chapter will give insight on how Romanies were perceived by the political elite since their migration to Europe in the fifteenth century, and how their presence was exploited by Europe's newly evolving nation states and governments. This chapter is important, because one has to understand that social exclusion and discrimination against Romanies in present day Europe is not only the result of simple-minded racism by the common people, but this racism was actually supported and utilized, especially during phases of modernization, by the political elite. These aspects are important to know in order to verify any

measures by the EU that contributes to fight discrimination and social exclusion of the Romani people, like anti-discrimination law.

While the English word "Gypsies", as mentioned earlier, and the Spanish word "Gitanos" probably come from the assumption that Romani people originated in Egypt, the word root "Zigan" as in the German word "Zigeuner" is a foreign appellation that probably developed from Greek or Persian. Presently, the Romani's origin is assumed to be somewhere in India.

In German history, a tribe called "Cingari" or "Cigäwnär" is mentioned for the first time in the Chronicles of the "Regensburger Presbyters Andreas" in the year 1424 (c.f. Wolfgang Wippermann 1997, p. 50). Hence, the Romani's immigration into the European area probably dates back to some point around the early 15th century. At that time, Romani groups received writs of protection and letters of consignment, among others from King Friedrich in 1442. However, these lasted only for a short period of time. As early as the year 1498 these guarantees were again withdrawn via a resolution by the Freiburger Reichstag, which accused the Romanis of being spies and outlawed them. It was assumed that "Zigeuner" were damned by god to eternal restlessness and migration, a stereotype that was also very popular among anti-Semites.

At the end of the 18th century a development started to occur, which in turn heavily influenced the lives of the Romani people: "Gypsy"-romanticism, a form of reactionary anti-modernism. It was a counter reaction to a phase of social modernization, triggered by the introduction of an obligatory military service in the newly developed nation states of Europe. It was the beginning of standing armies, for which the ordinary people were to be registered; a life changing development. As a result, many people lost liberties in many aspects of their lives. Negative attitudes towards begging and unemployment developed (c.f. Tobias Meints 2007, p. 5).

In the upcoming world of modern-secular thought of the pre-modern era, closely associated with the "Gypsies", was a perceived "state of nature" (the assumed state before human civilization). It was romanticized and condemned; positive and negative stereotypes evolved concurrently. Examples of these stereotypes range from romantic campfire and music on the one hand, to work-shy thieves and beggars on the other. In addition, Romani people were associated with

magicians, witches and the devil. Such ancient stereotypes were quickly implemented into the new romantic construction of the "Gypsies" as an inherently anti-modern people (Severin Strasky 2006, p. 136).

The governments of the newly developed European nation states began to utilize negative stereotypes of the "Gypsies" as antipodes of the registered society in order to civilize the masses. At the end of the 18th century the University-Professor Heinrich Moritz Grellmann from Göttingen described the Romanies as an Oriental people of thieves, spies, child murderers, and cannibals, who were addicted to tobacco and alcohol. They were considered to be filthy, lazy, excessively sexually active and inclined to prostitution; an alien to the white race (Severin Strasky 2006, p. 135).

Sadly, but not unexpected, the period of Romanticism was a time of increased frequency of Pogroms against Romani people. In these pogroms, socio-economic aspects played an additional role. Travelling vendors were progressively perceived as unwelcome competition to local merchants, and the spread of anti-Gypsyism was an easy way to get rid of them (Severin Strasky 2006, p. 135).

2.4. "Gypsies" in the Holocaust

The National Socialist extermination apparatus developed the greatest humanitarian disaster in world history and is/was unique worldwide in its qualitative and quantitative dimension. The Holocaust displayed the peak of European anti-Semitic and anti-Gypsy aggression. By total numbers, significantly more Jews died in the Holocaust, but by proportion the murders of Romanies are of an equal dimension. It is estimated that 350,000 to 500,000 Roma were killed by the Nazis and their collaborators, which means that almost every second European Romani died during this genocide. The Dokumentations- und Kulturzentrum Deutscher Sinti und Roma Heidelberg claims that in Germany and Austria proportionally more Roma were killed than Jews (c.f. Dokumentations- und Kulturzentrum Deutscher Sinti und Roma, p. 7). This attempt to display one group as greater victim occurs to be very cynical and

senseless to the author. Unfortunately, a discourse about who suffered more exists among a small number of scholars.

To this day it is still contended whether “Gypsies” were mainly murdered for social or racial reasons. For example, Guenter Lewy, Professor for Political Science at the University of Massachusetts argues in favor of the assumption that the Holocaust, perceived by him only as the murder of the Jews during World War II, is unique and incomparable with the murder of the “Gypsies” (c.f. Gernot Haupt 2006, p. 148-149). He claims that there has not been a great “master plan” in order to exterminate the “Gypsies”, and that Romanies were only murdered because of their particular life style and behavior.

This argumentation line is not an isolated case. Indeed, so-called “Wiedergutmachungszahlungen”, which were granted to Jews after the fall of the Third Reich, were often denied to Romani people with the same argument. “Gypsies” were accused of not being persecuted and deported to concentration- and extermination-camps because of their race, but because of their social behavior.

These allegations are not correct. There is no doubt about the racist motivation for the extermination of the “Gypsies”. As a result of the cooperation between the RHF (Rassenhygienische Forschungsstelle) and the RKPA (Reichskriminalpolizeiamt) a “Regelung der Zigeunerfrage aus dem Wesen der Rasse heraus” was published at December 12, 1938 (c.f. Gernot Haupt 2006, p. 126).

For this reason the Dokumentations- und Kulturzentrum Deutscher Sinti und Roma Heidelberg counters that Guenter Lewy himself uses anti-Gypsy stereotypes in order to save the claim of the uniqueness of the Jewish genocide. He tries to downplay or deny the fact that Romani people, like Jews, were exterminated just for being of “Gypsy” heritage. And while Jews wore yellow, hexagonal star-patches, so called “Judensterne” on their concentration camp uniforms, Romanies could be identified by a patch with a big “Z”-letter, standing for “ZigeunerInnen”.

One definite difference between the ideology behind the murder of the Jews and the “Gypsies” was the fact that Adolf Hitler himself hardly ever mentioned “Gypsies” in his speeches and writings (c.f. Till Bastian 2001, p. 37). The Fuehrer

himself declared the Jews as Germany's greatest threat. He constructed them as the anti-race of the "Arian People". Jews were seen as powerful and evil, trying to control the world. But many other "races" were declared as inferior by the "Arians", too. The motivation behind their murder had been to prevent the proliferation of poor and baneful genotypes. The so-called "Gypsies" were the people at the bottom of this hierarchical segmentation of inferior races. Nonetheless, the Jews had always received most of the attention of Nazi-Germany's elite because of their alleged power and intelligence (c.f. Till Bastian 2001, p. 37).

Some among Germany's Nazi elite assumed that the "Gypsies" were of Arian origin, because they split off from an upper class in India hundreds of years ago. Heinrich Himmler himself demanded to spare the lives of "pure Gypsies" and preserve them as "objects of historic interest" in Austria (c.f. Till Bastian 2001, p. 41). Nevertheless, this idea has never been put into practice, and therefore made no difference to the suffering of the Romani people in Europe under Nazi occupation. However, while "the racially pure" among the Jews were the primary target of Nazi extermination, it was the "racially" mixed among the Gypsies, the "half- and quarter-Gypsies", who were prosecuted and murdered with the highest effort.

Be that as it may, the central aspect of Nazi-ideology had been to exterminate baneful elements in the German racial corpus, and after all "Gypsies" were seen as an alien race, like the Jews. The extermination of the "Gypsies" cannot be detached or singled out as less disastrous for the Romanies than the Shoah (the Hebrew term for the attempted extermination of the Jews by the Nazis) is for the Jewish people. In fact, every disassociation is purely cynical, since "Gypsies" and Jews were murdered in the same way, via mass execution by shooting as well as gas chambers, and by the same persecutors with the same tools and the same goal: the total and eternal extermination of the alien races to achieve a pure Arian German nation.

Not the extermination of the Jews or "Gypsies" should be singled out as the greatest humanitarian and ideological disaster in human history, but the extermination apparatus of Nazi-Germany and all of its collaborators. Researchers like Guenter Lewy make the mistake to link the "uniqueness" of this incomparable occasion to a certain victim group, when indeed it should in the first place be linked to the persecutors and murderers and their ideology.

2.5 The Continuation of Discrimination against Romani People after World War II

After the heyday of Romani persecution during the Holocaust, discrimination and hatred against Romani people continued unchecked in Germany (c.f. Tobias Meints 2007, p.12), and there is no sign that other European countries did a better job in the field of processing their anti-Gypsy history. The reasons for this are the central topics of this chapter. As mentioned before, anti-Gypsyism never became a serious subject among politicians and academics, in contrast to anti-Semitism. Because wrongdoing towards the Romanies in World War II was denied, unchecked discrimination against Romani people continued after the genocide of the Nazis in Europe.

During the Third Reich, a registration system for "Gypsies" was established with the objective of total surveillance as preparatory work for the ensuing extinction policy. This preparatory work was conducted by the "Reichszentrale zur Bekämpfung des Zigeunerwesens". Many officials of this department continued to persecute Romanies in Germany after World War II (c.f. Änneke Winckel 2002, p. 33-34). The national socialist's "Zigeunerleitstelle" (control center for "Gypsies") was rebranded to the "Gypsy"-branch of the Bavarian Land Office of Criminal Investigation, and their "Zigeunerakten" ("Gypsy"-records) were merely taken over. Even national socialist law was adopted after the Holocaust. In 1953 the "Gesetz zur Bekämpfung des Zigeunerwesens" was renamed to "Landfahrerordnung", but the content remained the same (c.f. Romani Rose 1987, p. 33). The term "Landfahrer" (country traveler) became a substitute for "Gypsy".

The debate about compensatory payments for victims of the Holocaust excluded Romanies from the beginning. The same police officers who participated in the racial extermination process during the Second World War were brought up to defend the NS policy towards Romanies as a combat against criminals and antisocial people. In 1950 the finance ministry of Baden-Württemberg decided:

"Die Prüfung der Wiedergutmachung der Zigeuner und Zigeunermischlinge nach den Vorschriften des Entschädigungsgesetzes hat zu dem Ergebnis geführt, dass der genannte Personenkreis überwiegend nicht aus rassistischen Gründen, sondern wegen seiner asozialen und kriminellen Haltung

verfolgt und inhaftiert worden ist.[...] Das Landesamt Stuttgart (sic!) wird seine Ermittlungen in Zusammenarbeit mit dem Zentralamt für Kriminalidentifizierung und Polizeistatistik in München und der Kriminal-Hauptstelle, Landfahrerpolizeistelle in Karlsruhe durchführen“ (Originalquelle 1950 zitiert in Romani Rose 1987, p. 53).

Even after the Holocaust racial research about "Gypsies" continued to be conducted in Germany. Hermann Arnold, a medical officer from Landau, was the central figure in this field. He received the records of the "Rassenhygienischen und Erbbiologischen Forschungsstelle im Reichsgesundheitsamt", a research site during the Third Reich which was headed by Robert Ritter, who was the all decisive person behind the racist theories about "Gypsies". Hermann Arnold continued to do research about "Gypsies" with the spadework of Robert Ritter. Unfortunately, he had major influence in German politics, especially as an accomplice witness concerning the compensation payments. Until 1979 Arnold was also a member of the advising committee for "Zigeunerfragen" (Gypsy Issues) at the German Federal Ministry for Families (c.f. Änneke Winckel 2002, p. 40). As a result, a huge number of applications by Romani victims of the Nazi persecution were denied any compensation.

In the newly formed Eastern Germany, the so called German Democratic Republic (GDR), Romani people were never granted a minority status. Applications for compensatory benefits as victims of the Holocaust were predominantly rejected. Only a few exceptions were permitted if applying Romanies could prove that they were documented by their local employment agency and in the case they had kept an antifascist-democratic morale (c.f. Änneke Winckel 2002, p. 42). As a matter of fact, only Romani people had to fulfill such preconditions in order to be recognized as victims of the National Socialists (Nazis). This shows that anti-Gypsy discrimination in the form of unequal treatment continued to exist in the German Democratic Republic (GDR) as well.

Romani people had to wait until the mid sixties before their group was recognized as a specific victim group of the National Socialists genocide. Finally, they were granted a pension for persecuted people. However, Romani persecution under the NS-regime was never publicly addressed or discussed in the GDR. In this respect, the Federal Republic of Germany and the German Democratic Republic shared a similar history: after World War II it took activists in Germany several

decades before they were able to channel public attention to the past and present hardships of the Romani people. Indeed, Germans from East and West did not develop decisively different attitudes towards Romanies (c.f. Wolfgang Wippermann 1997, p.174).

3. The Two-Dimensional Evaluation of EU Anti-Discrimination Law

The primary goal of this thesis is to evaluate the efficiency of EU anti-discrimination law. Efficiency is defined as the ability of EU anti-discrimination law to prevent or respond to anti-Gypsy discrimination and social exclusion within the EU's Member States, committed by both private and public actors, such as state officials, private employers and the common citizens.

The whole territory of the EU will be considered as one research entity, because the problem is assumed to be not a national, but a pan-European problem. Like anti-Semitism, Romani discrimination and social exclusion exists to greater or lesser degrees in all EU Member States (c.f. Amnesty International 08.06.2009), and whether the 2000 Racial Equality Directive is efficient (meaning it had a positive impact on anti-Gypsy discrimination and Romani social exclusion) can only be assessed if the greatest perpetrators of anti-Gypsy discrimination could be thwarted since its introduction. Because an analysis of all Member States would be too wide-ranging, this chapter will concentrate on the strongest cases of anti-Gypsy discrimination and Romani social exclusion within the EU, and on those countries with a decisive Romani population. The different circumstances and exit criteria such as different times of entry into the European Union by the Member States will of course be taken into consideration during this qualitative analysis.

The questions to be answered in this chapter are: How and why was anti-discrimination law developed, and which conclusion can be drawn from this with regard to its efficiency towards anti-Gypsy discrimination and Romani social exclusion? What impact has anti-discrimination law had to this point on anti-Gypsy discrimination and Romani social exclusion? What kind of improvements are demanded to improve the efficiency of anti-discrimination law, and which social policy measures helped to bring about positive change to the subject of Romani social inclusion complementary to EU anti-discrimination legislation?

The material examined in chapter 3.1 will consist of secondary literature, complemented by primary sources such as legislative texts, case rulings, and

declarations, in order to examine the development of EU anti-discrimination law. Although all existing varieties of discrimination legislation will be investigated, the primary focus lies on the question how and why anti-discrimination legislation against racial discrimination came into being.

Chapter 3.2 consists of six sub-chapters. The first is an examination of the 2000 Racial Equality Directive's content. The other five chapters deal with the pooled indicators derived from the Directive's regulations, in order to analyze whether EU anti-discrimination law changed the discrimination and social exclusion of Romani people in the EU.

3.1 The Development of EU Anti-Discrimination Law

This thesis began with a small introduction into EU anti-discrimination principles, and why it is important to the author to write about its efficiency. It was followed by a chapter about the Romani people, an introduction into history and pattern of their persecution and discrimination. The target of this chapter is to explore the essence of the EU's anti-discrimination body, by examining how and by what motivation of which actors it came into being. An academically excellent and encompassing work from Mark Bell (c.f. Mark Bell 2004), who is Professor at the School of Law at Leicester University and an expert on anti-discrimination and labor law, serves as foundation for this analysis. The chapter will start with the theoretical model of the Policy Cycle, which will help giving the analysis of the evolution of anti-discrimination law toward racial equality (chapter 3.1.5) structure. Two sub-chapters about market integration and the social policy theory according to Mark Bell will provide two theoretical approaches of how anti-discrimination law in the EU could develop.

EU political integration has often been a very asymmetric phenomenon (as will become apparent in this chapter). There is no doubt about European social policy as a policy field that has been neglected in the European integration process from the beginning. It was never considered a section very closely related to the "economic vocation of the European Union" (Mark Bell 2004, p. 1), which is to date the driving

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engine behind EU integration. Within the field of social policy this asymmetry persists. There is a significant difference between the evolutionary history of anti-discrimination law concerning gender and nationality on the one hand, and other forms of anti-discrimination law on the other hand, with the latter notoriously lagging behind.

3.1.1 The Policy Cycle

In order to bring some structure into the development of a policy field like anti-discrimination legislation, among the vast number of approaches in the field of public policy analysis the Policy Cycle lends itself as practical. It might not be applicable to contribute to the revelation of causal relationships (c.f. Sonja Blum/Klaus Schubert 2009, p. 131). However, the model will provide some structure for the chapter about how EU anti-discrimination law developed over the past six decades.

The Policy Cycle is a tool to visualize the different phases of the development of a policy field. With its help it is possible to locate certain actors and their interests at different steps in the process in order to illuminate their impact on the outcome. Of course, the different steps of the Policy Cycle are not as clearly separated as they are in the model. Borderlines between phases like agenda setting and policy formulation are blurry and partially flow into each other. However, as long as it is taken into account that the model is primarily a help for orientation, it serves the purpose to reveal the black box of a political system.

The Policy Cycle is a heuristic model, which can be roughly partitioned into five steps that are connected in a circular form. This circle starts with the aspect of "problem definition", which is followed by "agenda setting", "policy formulation" and "implementation", and ends with "policy termination". After that, either the whole policy process restarts again, or it comes to a general policy-termination (c.f. Sonja Blum/Klaus Schubert 2009).

The recognition that a socioeconomic problem exists is the entitled **problem definition** and is the first phase the in Policy Cycle. (c.f. Sonja Blum/Klaus Schubert

2009, p. 106). This sounds banal, but the great difficulty of this phase becomes clearer when one considers the fact that any social problem is a socially constructed process (c.f. Michael Howlett/M. Ramesh 2003, p. 121). In the case of a political party, activist group or other actor anticipating a divergence between the normative beliefs, ideas, etc. and the actual status quo, one can speak of problem recognition. At this point, the actors try to put the problem on the political agenda

A theoretical model that easily blends into this first phase of the policy cycle is the so called "Garbage Can Model" (c.f. G. David Garson 2008). It assumes that different actors work out policy plans for a great variety of problems and scenarios, and have their own interest to push their work on the agenda. This approach has the advantage that it enables the separation of the problem itself from the provided solution processes. However, it also stresses the structural components of the problem definition phase and neglects its qualitative content. Hence, it can only be used as a complementary tool, which does not oust the qualitative analysis of the problem's content.

Although it looks like the sheer number of interest groups offer an incalculable number of problem definitions, a problem filter is already in use at an early stage according to the policy cycle. Actors need a certain amount of resources to work out the proposal for a problem definition. Groups of low social, economic and political status, like many Romani people clearly are, will probably find it particularly difficult to even formulate the social problem of anti-Gypsy discrimination. It needs a certain degree of education to recognize and describe such a complicated social phenomenon.

The next phase in the Policy Cycle is called **agenda setting**, which is the term for the step from problem recognition of some actor to the actual political agenda. The question being asked at this stage is: "Why do some issues appear on the governmental agenda for action and not others?" (Michael Howlett/M. Ramesh 2003, p. 120)". Michael Howlett (Professor of Political Science at Simon Fraser University) and M. Ramesh (Professor of Social Policy at the University of Hong Kong) list four different forms of agenda setting. The first form concerns a topic that combines extensive public and political support. In such a case it is most likely that a policy is put on the political agenda quickly and successfully. The second form refers to topics

that are externally initiated. This means that certain actors are able to ignite political interest. Third, a policy can be in the interest of the government, but also lack public support. In such a case politicians often try to increase support with measures like official campaigns, advertisement, and the research for additional arguments in favor of the project. Such initiatives are scarcely successful. The rarest form of agenda setting can be observed about topics that lack any political attention, the fourth form of agenda setting.

The upcoming subject of anti-discrimination policy and law in the EU appears to be a mix of the second, third and fourth of these forms of agenda setting, as will be further explicated in the coming chapters of this thesis. External initiators are those actors who lobby in favor of the Romani people, including human rights NGOs. The governments of the EU Member States seem to be, by and large, less interested in the subject than the officials of the EU's primary organs. Additionally, public support in favor of the Romanies is practically non-existent. To the contrary, public opinion about Romani people is overwhelmingly negative. All this indicates little assertiveness for an anti-discrimination agenda in favor of Romani people.

In the context of agenda setting it must be stressed that non-action can also be the result of a political decision (Sonja Blum/Klaus Schubert 2009, p. 110-111). If a socioeconomic problem is neglected on purpose, it is possible that certain policy monopolies exist (c.f. Frank R. Baumgartner/Bryan D. Jones 1991, p. 1047). A policy monopoly is a policy field dominated by power structures that determine the manner of perception of specific problems. As a result, certain topics do not make it on the political agenda because certain actors have an interest to retain the status quo.

Agenda setting can also be the result of unforeseen events and catastrophes. These can lead to excited discussions in the media and public, which exert pressure on political actors. If a proposal becomes part of the political agenda this way, one can also speak of an external initiative that lacks an original initiating actor. However, such a scenario can lead to a window of opportunity for certain actors to push their policies on the political agenda, sold as solutions to the abruptly manifested problem. As will be explained in the coming chapters, this is clearly the case for the development of EU anti-discrimination law and policy, and also applies to the topic of discrimination against Romani people.

Based on the theory of opportunity windows Anthony Downs, Senior Fellow at the Brookings Institute in Washington D.C., introduced the idea of an "issue attention cycle" (Anthony Downs 1972, p. 38). He generally rejects the assumption that any topic is able to receive constant attention. Instead, he believes that topics appear and disappear repeatedly in the public and on the political agenda. Windows of opportunity can open up very quickly, but they can also disappear with the same pace as they came, which is why interest groups and actors often have to act fast and exploit the situation.

Policy formulation is the phase in which goals, means and strategies are developed in order to appropriately tackle the respective socio-economic problem. The information from the agenda setting phase is applied to concretize suggestions and alternative actions (c.f. Sonja Blum/Klaus Schubert 2009, p. 113).

Several factors are decisive for the outcome of this phase. Which actor(s) put the problem on the agenda plays a major role. Time is also a criterion, especially regarding the above mentioned window of opportunity. These factors are also connected with the question of how a problem is generally perceived. Formulated as a question, this means: what are the normative aspects and beliefs?

According to the theory of the Policy Cycle, the number of actors playing a role is shrinking at this stage (c.f. Sonja Blum/Klaus Schubert 2009, p. 113), although their general number remains large. The legislative branch starts to enter the game, but a restricted number of interest groups, economic enterprises and others will continue to participate for their own interest.

Two very powerful actors in this phase are the ministerial bureaucracy and the interest groups, which join into deliberations and try to develop compromises. The compromises then are either confirmed in legislative committees or altered in cases of reservation. Because of the very complex mechanisms of the legislation process the final outcome might differ decisively with the original plan. This often leads to discontent with interest groups, ministry officials, scientists or other actors who are originally responsible for the initiative (c.f. Sonja Blum/Klaus Schubert 2009, p. 117).

In the end phase of the policy formulation a decision is to be made, and the number of actors with an influential impact dramatically shrinks. Now, the central

question becomes which political levels are to be included in the decision making process, which departments or ministries are involved, how the whole policy is to be financed, and whether additional actors are to be included (c.f. Sonja Blum/Klaus Schubert 2009, p. 118). It is in the hands of the policymakers in the power center to decide who is now permitted to have an impact. This end phase of the policy formulation phase is also the time when a final decision is made about whether the particular socio-economic problem is tackled with a new law or policy, or whether it comes to a negative (or non-)decision. The whole process then finishes with a legislative decision.

The next (and in some cases last) step is termed **policy implementation**. At this point policies need to be turned into practice. So far the policy existed only on paper, but now the realization of the theory comes on the agenda. It is probably one of the toughest phases of policy making. In 1973, Jeffrey L. Pressman (former Professor of Political Science at MIT) and Aaron Wildavsky (American Political Scientist and former Professor at University of California Berkeley) provocatively claimed that insufficient policy implementation is not the exception but the rule, and that it would be astonishing if federal programs worked at all (c.f. Jeffrey L. Pressman/Aaron Wildavsky 1984).

The last step of the Policy Cycle, with disregard to a possible termination phase, is the **evaluation** of the policy. Here the question is not only whether a policy was implemented, but also how it was implemented, and what the effective results and repercussions are. Unfortunately, an evaluation is not always pursued. Some actors might not have an interest in the practical results and effectiveness of newly implemented policies.

Once all steps of the Policy Cycle are lined out, it is necessary to find an approach to relate the practical subject, in this case EU anti-discrimination law, to the theoretical model of policy development. It is recommended that one should

"[...] begin with the structural logic of a policy design and work backward to illuminate the choices actors in subsystems made to include and exclude the relevant policy knowledge, leading to a particular policy design. The choice to include and exclude policy knowledge becomes characteristic of the policymaking process [...]" (Thomas E. James and Paul D. Jorgensen 2009, p. 143).

For the topic of this paper this suggestion would mean to first line out anti-discrimination policy and law and then slowly go back in time in order to reveal how certain policies and laws came into place. However, in this case the suggested approach is adjusted. It is assumed to be more efficient to follow up the development of EU anti-discrimination policy and law from the beginning. Although the description of the development process itself is not the primary goal of this paper, it will be the means to aid in understanding why anti-discrimination law works the way it does and where its strengths and weaknesses come from.

3.1.2 The Market Integration Model

While the Policy Cycle helps to give the evolutionary process of anti-discrimination law theoretical structure, the Market Integration and Social Policy Models will enable to develop causal explanations of how EU anti-discrimination law could take shape. The market integration model is based on the presumption that the European Union is primarily an economic project. It is assumed that every social policy introduced by the EU was developed in order to guarantee the smooth functioning of economic development in Europe. If the development of EU anti-discrimination policy was restricted to this kind of expansion process, then every new policy could be traced back to the original need of further economic integration. Today anti-discrimination policy and law development can be described as the outcome of both, the need for further market integration, and the emergence from a normative social citizenship policy (c.f. Mark Bell 2004, p. 7). At the beginning however, the notion of an EU social citizenship was not very sophisticated. The lion's share of supranational policies derived as a result of market integration.

The EU had social objectives from its beginning, which can be found in Article 117 of the EEC Treaty from 1957/58. It recognizes "[...] the need to promote improved working conditions and an improved standard of living for workers". However, the original six members of the EEC Treaty were divided about the detailed meaning of this Article. There were two fractions, the one that generally supported an integration path that included the development of supranational social law, and the

other which wanted EU integration being restricted to market integration only. The former fraction was led by France, which feared the competition with other potential member candidates of the Union, due to its higher social protection standards. In particular, the French stressed the differences on national legislation concerning the equal payment of men and women (c.f. Doreen Collins 1975, p. 7), which gave other countries the ability of cheaper production by exploiting female workers. The consequential compromise of this dispute among the EU member states can be considered as the hour of birth of social integration via the market integration model: Article 119 of the EEC Treaty from 25.03.1957 states that "[...] each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work."

However, the founders of the EEC Treaty wanted it to be hard to pass supranational legislation (c.f. Otto Kahn-Freund 1960, p. 309); hence the treaty lacked any legal basis for social legislation. Article 119 remained a vague statement, because states that acted against it could not be sued by individuals and therefore forced by legal means to comply. It is obvious that supranational social legislation in the early stages of the Union lacked any efficiency and resembled a declaration of intent rather than actual enforceable law.

This rather obscure and minimalist state of social policy remained as status quo for quite a long time, and was only slightly adjusted to the needs of Europe's common market until the eighties of the last century. By then, a larger shift occurred via the 1986 Single European Act, which transformed the common market into the internal market. At that time deeper social integration was necessary in order to maintain a smooth functioning of the Union's market. It can safely be asserted that social law and policy was primarily market-driven until the 1990s.

On 31 November 1992 the social dumping topic reappeared on the European agenda, spurred by the removal of remaining barriers to the free movement of foods, services, capital and persons (c.f. EC Treaty, Article 14). The European Commission complained about "[...] the gaining of an unfair competitive advantage within the Community through unacceptably low social standards" (c.f. European Commission 1993, p. 6). Whether such social dumping really existed or turned out to be an unfounded perception remains disputed (c.f. Mark Bell 2004, p. 10). Nevertheless, it

was the subject that pulled the topic of supranational social law back on the European agenda.

The more EU internal market rules deregulated national social policies for the purpose of a free internal market, the more pressure developed to fill in the emerging legal space with pan-national law. Therefore, the European Commission announced the

"[...] establishment of a framework of basic minimum standards [...] [as] a bulwark against using low social standards as an instrument of unfair economic competition and protection against reducing social standards to gain competitiveness" (European Commission 1994, Introduction, Paragraph 19)

It was believed that the depletion of social policies on the national level needed a supranational substitute.

3.1.3 Social Citizenship Model

The Social Citizenship Model is an alternative integration path to the Market Integration Model. At its core is the normative aspiration of the EU's leaders to make the Union a guarantor of civic and social rights. How comprehensive these social rights should be is a continuing issue that will never be completely resolved. The EU Charter of Fundamental Rights, which was adopted in the Lisbon Treaty in December 2009 gives a general idea about the normative realm of European social rights, but is not legally binding.

The spectrum of social rights in the Charter is very broad, which also became reason for criticism. It was rightly noted that rights can only be based on values shared by all EU members; otherwise they would not be regarded as liberating but rather constraining. Some scholars even fret a competition among European politicians for broader rights concessions in order to win over public support for the EU (c.f. J. H. H. Weiler 1999, p. 334). Hence, it is no surprise that to this point the social citizenship model outlined in the Charta is far away from becoming an executable reality.

Mark Bell argues that the initial steps toward a social citizenship model were made via legislative and juridical intervention, (c.f. Mark Bell 2004, p. 16). The first legislative intervention happened as early as 1989 in form of the Social Charta, a non-binding declaration, which in fact developed in the course of the market integration model. As one can derive from that, both models are not necessarily exclusive, but overlap.

A bigger step towards social citizenship was the Treaty of Amsterdam from 10.11.1997, which decisively increased the competences of the EU in social matters. It created the legal basis for the adoption of a number of social legislations in several labor-related areas: workers' health and safety, working conditions, information and consultation of workers, integration of workers excluded from the labor market, equality between men and women with regard to labor market opportunities and treatment at work, and the integration of workers excluded from the labor market. In Chapter 4 Article 118/2 of the Treaty of Amsterdam from 2 October 1997 it is stated that "[...] to this end, the Council may adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States." Article 117 of the Treaty of Amsterdam orders to "[have] in mind fundamental social rights" when social policy objectives are pursued.

Although in theory the preconditions for the development of social policy were laid, in practice the EU member states never had much incentive for an extended understanding of citizenship, which develops beyond market integration. Free movement and market citizenship remained the dominant concepts of social policy development after the introduction of the Treaty of Amsterdam (c.f. M. Everson 1995, p. 79).

A more successful source for the development of social policy in general and anti-discrimination law in particular has been the Court of Justice. It developed fundamental rights on the legal basis of case law, and among others refers to Article 6(2) of the Treaty of the European Union and other international treaties of which the EU's member states are signatories (c.f. Court of Justice: Case 136/79, 1985, paragraph 18). The before mentioned Social Charta is also an important source the Court of Justice can refer to.

Nevertheless, social policy, which anti-discrimination policy is a part of, is a field still considered as a matter of national sovereignty. Social policies that are introduced by EU institutions and not considered as necessary for the functioning of the single market, have a rough ride to go beyond well-meant intentions and non-binding declarations. The main tangible moves beyond this political stalemate have been made by the European Court of Justice.

The next three sub-chapters deal with the specific developments of anti-discrimination law in the categories gender, nationality, racial discrimination and sexual orientation. The sub chapter about racial discrimination will be of largest scope, because it is most relevant to the main subject of this thesis. Nationality and gender discrimination are important basics to be explored for the understanding of the development of EU anti-discrimination law. Sexual orientation will be introduced too, because it is an example of another major branch of anti-discrimination law, which most recently moved to focus in Europe. It will help to answer the question in which direction and in what way anti-discrimination law is currently evolving.

3.1.4 Nationality and Gender

Nationality and gender discrimination are the two aspects of anti-discrimination law that are historically and compared with other phenomena of discrimination most sophisticated. They were prioritized in the system from the beginning. Both were earlier introduced and quicker developed than other anti-discrimination fields. Indeed, both forms of discrimination are often intertwined with other forms of discrimination, a phenomenon described as intersectionality (c.f. Michele Tracy Berger/Kathleen Guidroz 2009). It makes both legislative anti-discrimination bodies very important in an analysis of anti-discrimination legislation. For example, racial discrimination is very often interwoven with racism based on nationality, as it was the case with Romanies from Romania in France and Italy (c.f. chapter 3.2.6)..

The most important reason for the qualitative supremacy of EU anti-discrimination legislation towards nationality and gender is not difficult to point out. Anti-discrimination law developed as a result of the Market Integration Model.

Discrimination for reasons of nationality and gender has been perceived as distorting competition in Europe from the beginning. Racist and ethnic discrimination on the other hand are not commonly considered as a threat to competitiveness or the smooth functioning of the common market. This is unfortunate, because scholars from the United States calculated that racial discrimination has a clear negative impact on a country's GDP development as early as 1993 (Rhonda Reynolds 1993, p. 27-28).

Discrimination on ground of nationality was already countered in the European Coal and Steel Community. The EEC Treaty prohibited such discrimination in agriculture and transport (c.f. Mark Bell 2004, p. 33). Article 12 states that "[within] the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited." Furthermore, Article 39(2) of the EC Treaty demands "[...] the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment." It is important to stress that the prohibition of discrimination on grounds of nationality discriminates between direct and indirect forms of discrimination, as stated by the European Court of Justice, among others, in Case 15/69 Württembergische Milchverwertung-Sudmilch v Ulviola, ECR 363 from 1969, or in Case C-187/96 Commission v Greece, ECR I-1095, from 1998.

Although Article 12 of the EC Treaty prohibits any "discrimination on grounds of nationality", it has not been applied to the discrimination of third country nationals in the EU. It might not be stated explicitly that people with citizenships from outside the EU are excluded from discrimination protection, but the Article was interpreted as being linked to the rules of free movement within the EU. Being a product of market integration as opposed to a more normative and comprehensive understanding of anti-discrimination law, Article 12 is not to be applied to all people living within EU boundaries. Its purpose was never to encounter irrational prejudice, but to secure the functioning of the market.

However, the European Court of Justice has established a link between non-discrimination in the area of social discrimination and the social security of minority workers from Morocco, Algeria and Turkey. This was made possible with the help of

bilateral agreements between the EU and the respective countries. Mark Bell asserts that the Court

"[...] is increasingly building links between EC Treaty, Article 12 on non-discrimination and Article 17 which creates citizenship. Probably as a balance to this progressive step, such a built up of anti-discrimination rights for non EU citizens is limited to those people who are legal residents in their host countries (Mark Bell 2004, p. 40).

Apparently, economic arguments are still prevalent. The restriction to legal residents prevents the applicability to other non-citizens than guest workers and their families. The most vulnerable groups of third country nationals, political and economic refugees, are further excluded.

Women have been considered a much needed work force from day one of the European Community. Discrimination against them worried Member States for fear of competitive distortion, as mentioned earlier. The beginning of anti-discrimination policy towards women was set with Article 119 of the EC Treaty, which commands equal pay for women and men. From this time on, a large body of law has been formed to improve the status of women in EU member states. However, practical efficiency of such law became tangible only much later. After another two decades Article 119 was transformed into an "active equal opportunities law" (Mark Bell 2004, p. 43). In 1971, the European Court of Justice ruled in the so called "Defrenne Case" (c.f. ECJ: Case 80/70, 1971) that it was given direct effect, which means that it became legally enforceable by individuals towards EU member states. In addition, this ruling provided the European Commission with a strong mandate to intensify their gender equality efforts. A few years later the 1974 social action program was introduced, as a result of a time period of disseminating doubts over the European Community's legitimacy.

Anti-discrimination law concerning gender discrimination could develop effectively because it has been a side-effect of economic integration. Alas, this also means that discrimination against women which is not considered to endanger market integration is also less counteracted. Sexual discrimination encompasses many subject areas, ranging from reproductive rights to violence against women. However, EU law avoids many of these subjects and stresses its focus on "public aspects" (C. McGlynn 1996, p. 244). In many cases, the private sphere is not

considered as effectively influencing market dynamics. In addition, the EU continued to eschew subjects that were in any sense morally and religiously controversial, like abortion rights and issues about family responsibilities (c.f. ECJ: Case C-159/90, 1991).

After 1978, legislative reform in the area of gender discrimination slowed down as a result of only minor market integration efforts, and was not revived before the introduction of the 1989 Social Charter. Especially the United Kingdom refused any further delegation of social policy rights to the European level. Only the European Court further worked on anti-gender discrimination law, especially by clarifying the definition of indirect discrimination, in particular against part time workers who happen to be predominantly female (c.f. ECJ: Case 170/84, 1986).

In the 1990's the European Commission introduced, thanks to a "renewed flexibility" (Mark Bell 2004, p. 46) of the European Council, the principle of "mainstreaming", which offers

"[...] systematic consideration of the differences between the conditions, situations and needs of women and men in all Community policies, at the point of planning, implementing and evaluation (European Commission: Annual Report, 12 February 1997, p. 2).

Mainstreaming is therefore an approach that has the potential to go beyond the model of market integration, but is refined to the realms of the European Community's policies.

Despite tangible improvements, significant flaws in anti-discrimination law towards gender equality continue to exist, with a system of individual litigation to fight discrimination leading the way. Support for plaintiffs is practically nonexistent, and the use of current anti-discrimination legislation is considered to be arduous (c.f. Linda Dickens 1992, p. 134).

There are several repercussions to this anti-discrimination regime, which is, one has to keep in mind, still one of the two most advanced ones in EU law alongside anti-discrimination law regarding national minorities. First of all, the weakest groups among women are the least protected. It can be assumed that Romani women, already stigmatized as "Gypsies" and belonging to one of Europe's poorest groups, have practically no chance to get use of such anti-discrimination instruments,

because they probably lack financial resources and know-how. Second, individual litigation can only treat the most obvious cases of discrimination. Indeed, it would be extremely hard for an individual to bring a charge against cases of structural discrimination. Individuals neither have the time, the resources nor expertise to start such comprehensive and tedious lawsuits. Unfortunately, structural discrimination against women is probably one of the most urgent and immense obstacles towards gender equality.

It can be summed up that, despite palpable progress in anti-discrimination law towards women, the established legal body remains deficient. On an individual basis, especially in the area of labor law, women's support in the fight for equality increased. Alas, the more anti-discrimination law targets discrimination outside this realm, the weaker it becomes. Furthermore, individuals with appropriate resources and know-how are able to defend themselves against injustice, while other women who lack these preconditions, often encountered among the weakest groups, do not receive much support.

3.1.5 Ethnic Minorities

Anti-discrimination policy and law towards Romani people is primarily a question of ethnic discrimination, although other elements like sexism and religious discrimination are intertwined with the phenomenon of anti-Gypsyism. However, for the moment these subtleties are neglected. Ethnic or racial discrimination can be observed against all kinds of minorities all over Europe, and remains a major obstacle to the EU's self-imposed principles. Surprisingly, the great degree of racism is not very hidden by Europe's population. In a European Commission survey from 1997, "one in three of those interviewed said they felt they were not at all racist" (European Commission 1998, p. 6), a quite forthright declaration.

In the early years of European integration, nationality discrimination was the primary concern of the European Community. In 1959 one quarter of the migrating working force came from countries beyond the European Community, a number that increased to two thirds in 1973 (Michael Shanks 1977, p. 31). Up to this point no

social policy that would help workers from such countries to integrate into their new homes was even thought of, due to the fact that at this time immigrants were considered as temporary workers only.

In the 1970s Western European countries restricted legal opportunities for labor immigrants, triggered by the deteriorating economic climate. The oil crisis of 1973 played a decisive role in this development. A couple years later, in 1978, the quarrel about the competence in social policy between the Community level and the Member States heated up. The Commission introduced a Directive draft on illegal immigration, with the goal to ensure the proper functioning of the common market. However, it was blocked by some Member States, which demanded consensus on the subject in the Council. This failure to delegate the subject of illegal immigration to the Community level stands in sharp contrast to the progress in European gender law at the same time (Mark Bell 2004, p. 58).

One explanation for the different developments is the dissimilarity of political strengths between third national “temporary workers” and women. The latter possess the right to vote, while the former are deprived of any power to fight for their rights. In times of economic troubles, third country nationals become victims of moods and fears of the citizenship holders. There is no political advantage for any party to defend the rights of Europe’s socially weakest inhabitants. Women on the other hand comprise more than half of the Community’s electorate.

With regard to the Policy Cycle model, it is clear that at this early stage Europe’s decision makers do not consider discrimination against minority groups based on their ethnic background a problem. Problem definition has yet to occur. Guest workers without citizenship have neither the organizational, nor the financial or political leverage to call attention to their situation.

In the 1980’s an initiative to approximate integration was put on the agenda of the European Community. This is because the abolishment of the Community’s borders would make it a lot easier for everyone, including third country nationals, to move between the member states. In 1985 the Commission introduced guidelines for the harmonization of migration policy, composed of the two dimensions “immigration control” and “integration of existing immigrants” (Mark Bell 2004, p. 60).

The next step towards a common integration policy was made by the European Court of Justice, which recognized a connection between migration policies and the Community's labor market. This again raised the topic of integration policy to a social policy field of Article 118 of the EC Treaty (which gives the Commission the task to promote social policy cooperation of Member States), therefore a matter of Community law. However, Article 118 refers only to the labor market, and the European Court dismissed the matter of cultural integration as a Community responsibility. Ethnic and racial integration did not end up becoming part of the remits of the European Community, and remained in the hands of the individual Member States.

During the same time period, the European Parliament developed an interest in the subject of EC policy on racism, as a result of the political success of far right parties in Europe, in particular in the 1984 European Parliament elections. Subsequently, the European Commission, Parliament and Council signed a joint declaration against racism and xenophobia. Unfortunately, this declaration had only symbolic value. The European Council, against the ambitions of the Parliament to make this declaration only a starting point, blocked every further development of a common anti-discrimination policy.

However, the European Parliament was able to insert the issue of racial discrimination into the preamble of the 1989 EC Social Charter, which demands the combat against all forms of discrimination. The European Council, alas, weakened this declaration by adding a statement that the treatment of third country nationals remains a matter of the Member States. Mark Bell concludes that "[while] racism entered into EC policy debate during the period 1985-90, primarily through the efforts of the Parliament, the opposition in the Council prevented any significant progress" (Mark Bell 2004, p. 62). Hence, the problem definition phase of the Policy Cycle was only partly beginning, because the most important decision makers of the European Communities like the European Council and Commission still neglected the subject.

The stalemate did not last very long, because the Council's opposition diminished quickly in the early 1990's. Three reasons played a role in its attitude change: cross border racism, spillover effects from EU immigration and asylum policies, and the establishment of anti-racist lobbying (c.f. Mark Bell 2004, p. 63).

Further advancement of right extremist parties frightened the political establishment: cross-border propaganda of right extremist thought demanded Europe-wide countermeasures, because right extremist groups started to exploit the differences among the Member States in persecution laws regarding right extremism. Hence, these right extremist groups became an external factor which started to pressure actors involved in the decision making process of anti-discrimination law. They became an unforeseen external factor, giving tailwind to those who supported further development in the area of anti-discrimination law. However, right extremists also became an actor that pushed governments to introduce more restrictive immigration laws.

The end of the cold war era led to a temporary increase of migration into the European Union, primarily from Central and Eastern Europe. In addition, the wars in the former Yugoslavian regions doubled the number of asylum seekers (c.f. Alan Butt-Philip 1994, p.182). This led to a lifting of immigration co-operation into the Third Pillar of the 1993 Treaty of Maastricht on European Union, and a number of measures countering immigration into the EU were implemented.

Anti-racist lobbying, on the other hand, appeared as a counter-movement to these more restrictive immigration policies of EU Member States and the European Union, and became also a lobbying actor in the policy field of anti-discrimination. The movement consisted primarily of migrants' rights groups, churches, human rights organizations, UNHCR, and the European Parliament (Mark Bell 2004, p. 68). The so-called "Starting Line Directive" to prohibit discrimination based on race, color, nationality, national and ethnic origin was introduced by the Starting Line Group, which consisted of the British Commission for Racial Equality, the Churches Committee for Migrants in Europe, and the Dutch National Bureau against Racism. The European Commission, alas, declined the initiative despite its backing by the European Parliament. The European Council remained divided in the question of competence between the Union and its Member States. In 1993, a number of anti-racism and xenophobia statements were issued via the Justice and Home Affairs Council, but nothing legally binding.

All in all, it was the 1980s and early 1990s when a new sensitivity for the problem of discrimination occurred. Different new actors entered the policy stage with

a clear interest, starting the problem definition phase of the Policy Cycle. The European Parliament felt pressure from the political far right, and tried to push for an anti-racism agenda. The European Council on the other hand restricted this plan, being the EU's organ that represents the Member States. The latter feared any delegation of social policy to the supranational level, and because the Council was and still is the most powerful institution in the EU, any development of anti-discrimination policy was blocked. However, the "Garbage Can Model" theory (c.f. chapter 3.2) suggests that at this point the development of anti-discrimination policy started, with the European Parliament waiting for moments to put its interests on the EU's policy agenda.

When Germany and France came under domestic pressure by the success of right extremist parties, they proposed a "Consultative Commission on racism and xenophobia", later being named "Kahn Commission" after its chair Jean Kahn (Mark Bell 2004, p. 70). The Commission stated that an amendment of the EU Treaty would be necessary that explicitly provides the EU with competence in combating racism and xenophobia (c.f. Consultative Commission on Racism and Xenophobia Final Report, p. 57). In addition, the report refers to the successful implementation of an anti-gender-discrimination regime, and demands similar EU legislation in the field of racial and ethnic discrimination from the European Community.

The report had significant political heft because the Commission consisted of EU Member states' Representatives. Several measures against racism followed the Commission's recommendations, including two Council Resolutions on racism and a declaration on racism at the workplace. The Council also approved the designation of the year 1997 as the "European year against racism" (c.f. European Council 1996). For the sake of better coordination among the Member States, the "European Monitoring Centre on Racism and Xenophobia" was established. All these incentives showed a greater acceptance of the issue of racial discrimination in the EU and especially the European Council, although binding instruments were still outstanding. Hence, all these measures can still be considered as part of the agenda setting phase; serious attempts for policy formulation have so far been blocked by the most decisive policy maker, the European Council. In other words, all policy formulation that has yet taken place has also been adopted was of symbolic value only. All measures taken so far were considered as a guide for future action by the European

Parliament, while the European Council only attempted a token gesture to pacify lobbying actors in the process who demanded action (a clear attempt to end the Policy Cycle). In the end it would turn out that the European Parliament's strategy would prevail.

When the Labour Government took over in the United Kingdom, British resistance to further delegate the issue of racial and ethnic discrimination to the Union diminished, and EC Article 13 (Treaty establishing the European Community) and TEU (Treaty on the European Union) Article 29 were amended. In Article 13 it stated that the Commission takes “appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”. TEU Article 29 demands “common action among Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia”. The amendment of the EC Treaty Article 13 calls to “create a specific competence for the Community to take appropriate action to combat discrimination based on [...] racial origin” (Mark Bell 2004, p. 55).

With regard to the Policy Cycle Model, the agenda-setting phase started with the outcome of EC Article 13. Further right extremist success on the local level complemented the already palpable pressure from the European Parliament. The change of thinking reached all the way into the Council, which subsequently gave up its blockading approach. In Policy Cycle theory, unforeseen events and catastrophes can lead to a window of opportunity (c.f. chapter 3.2) for policy legislation. Such decisive events occurred with the local success of right extremist parties in several of Europe's Member States, and the government change in Great Britain.

Furthermore, the upcoming stage can clearly be identified as decisive towards the Europeanization of anti-discrimination policy and law. According to Europeanization theory, domestic change and spillover effects lead to an Europeanization of policies. They are understood as an increase of information exchange, competition, and mutual cooperation and learning processes among the Member States (c.f. Maarten P. Vink/Paolo Graziano 2006, p. 10). This clearly happened in the case of domestic right extremist pressure. The fear of border-crossing successful far right politicians led to a Europe-wide agreement among the

establishment that anti-discrimination policy cannot be dealt with on a national level. It might not be completely absurd to talk of “Europeanization of fear” at this point.

The theory of Advocacy Coalition Frameworks teaches that change in public policy caused by policy knowledge only occurs when the belief system of one or several coalitions changes (Thomas E. James and Paul D. Jorgensen 2009, p. 144). Exactly this happened in the Council and in particular in the UK government via a change of government. It also makes clear that it is the belief of this newly established anti-discrimination coalition that the strengthening of Europe’s extreme right can only be stopped with the instrument of anti-discrimination policy and law. At this point it helps to think again about the before mentioned Garbage Can Model: it is clear that the European Parliament was the forerunner in the matter of anti-discrimination policy, and it therefore received a powerful position in the subsequent time period of policy formulation.

Finally, in June 2000, the 2000 Racial Equality Directive (c.f. Council Directive 2000/43/EC of 29 June 2000) was rapidly adopted, and with this step the policy formulation phase ended abruptly. The speed of this occurrence suggests that the Directive existed before, and certain actors like the European Parliament only waited for a window of opportunity to come. The policy formulation had started much earlier, which shows how blurry the border between the agenda setting and policy formulation phases is.

The Directive is the first of its kind that explicitly forbids ethnic discrimination in a wide range of areas, such as employment, education, social protection, social security, health care, social advantages and access to goods and services (c.f. Racial Equality Directive June 2000, paragraph 13). The Directive implemented specifically what Article 13 of the EC Treaty demanded in more general terms. At first sight, it might appear like a consistent further development of Article 13. However, Mark Bell argues, “[...] the speed with which the Directive was agreed is remarkable” (Mark Bell 2004, p. 73).

Interestingly, the European Commission started a debate about the implementation of Article 13 before the Treaty of Amsterdam was even ratified. On November 25th 1999 it presented three Directives for this purpose (Mark Bell 2004, p. 73). The first one forbids discrimination based on racial or ethnic origin, religion and

belief, age, disability, and sexual orientation in employment, the second in goods and services, and the third requires an action program on grounds listed in Article 13 of the EC Treaty except for sex.

In February 2000 an unexpected but decisive trigger came into play. The Austrians voted the extremist right wing party of Joerg Haider, the so-called Freedom Party of Austria, into a governing coalition with the conservative and Christian-Social People's Party. Because of Austria's historical fascist history the other Member States of the European Union started to boycott the EU Member State. The fear of the mainstream political parties, right extreme advancement, was confirmed by the Austrian Freedom Party's success.

Under the EU presidency of Portugal, the Racial Equality Directive was fast-tracked through the legislative process, promoted as a strong symbolic gesture against racism. The European Parliament took a particularly strong position in the negotiations for the Directive. In the legislative process the Council is required to ask for the Parliament's opinion on the Directive. The Council, led by the Portuguese, was in a hurry to end the process in its term, and gave way to a number of amendments demanded by the Parliament. Hence, the Directive bears the hallmarks of the Parliament, which in return acted quickly in the legislative procedure. The Racial Equality Directive was then finally adopted on June 6th 2000, and the European Parliament turned out to be very influential within the tight realm of influential actors (which also confirms the advanced stage of the Policy Cycle).

In addition to its acknowledgement for a large number of victim groups that suffer discrimination, the Directive also excels in the discipline of recognizing different forms of discrimination: direct and indirect discrimination, harassment, and discriminatory instructions can be found in Article 2(2)(a), Article 2(2)(b), Article 2(3) and Article 2(4) of the Directive. However, the Directive is far from perfect. For example, in a case of harassment, it leaves open the responsibility of employers if they are not the direct source of discrimination. National authorities keep an extended scope of discretion, which offers the possibility of diluting the legislation. Also problematic is the phrase "within the limits of the powers conferred upon the Community", which was taken over from Article 13, and weakens the law substantially (Mark Bell 2004, p. 76).

The biggest obstacles towards a Directive in favor of the weakest groups and individuals of European society are the limitations regarding third country nationals. Article 3(2) states: "This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons [...]". Indeed, these groups, which are explicitly left out of the Directive, are the most vulnerable of society. In many cases, racial and ethnic minorities are primarily citizens of third countries. Hence, it is easy to disguise racially motivated actions against minority groups as actions against third country citizens, which are explicitly excluded. This issue will be especially significant in reference to Romani people who do not enjoy an equal status as EU citizens.

The primary concern of several EU members regarding the discrimination of third country citizens was the issue of employment discrimination, in particular by Germany, the United Kingdom, Denmark and Luxembourg. These countries feared to deliver an instrument for third country nationals to challenge restrictions concerning their "[...] access to the labor market [...] as indirect discrimination" (Mark Bell 2004, p. 77).

Affirmative action, a subject closely related to the issue of anti-discrimination, (and excessively exerted in the United States of America) is permitted by Article 5 of the Directive. Unfortunately, it does not go as far as requiring any member states to make use of this instrument. It is no great surprise that most countries eschew positive discrimination, for its potential of strong resistance from the majority population.

The efficiency of EU anti-discrimination depends to a great degree on the aspects of legal remedies and enforcement. In this regard, the implementation of the Directive followed the model of gender equality legislation (c.f. Mark Bell 2004, p. 78), and improved its effectiveness in several ways. First, interest groups are permitted to provide support for complainants. Second, the burden of proof is shifted on the respondent if direct or indirect discrimination are presumed. Third, adverse treatment of a claimant is strictly prohibited. Fourth, sanctions must be effective, proportionate, and dissuasive. Fifth, every member state has to establish a national institution for the "promotion of equal treatment" and will have to "[...] provide independent

assistance to victims of discrimination [...]” as stated under Article 13 of the Racial Equality Directive. Unfortunately, the weaknesses from the gender equality framework were also taken over. Significantly in this context is the retainment of individual litigation as the main legal instrument for victims of discrimination to challenge any offence. Trade Unions and other organization are not eligible to submit and advance cases of discrimination (Mark Bell 2004, p. 78).

If one puts the amount of progress into context, which means to compare it with the notoriously slow development pace of anti-racist law in the EU (EC respectively), the Racial Equality Directive constitutes an enormous step in the creation of a comprehensive European anti-discrimination regime. However, also with regard to its obvious flaws, the question comes up whether the Racial Equality Directive was a unique step triggered by the success of right extremist electoral success, or a starting point for the implementation of a more comprehensive anti-discrimination regime. By examining the evolution of anti-discrimination law beyond the grounds of race, ethnicity or sex, the following sub-chapter will provide some answers to this question.

It can be summarized that the development of anti-discrimination law culminating in the form of the Racial Equality Directive stretches over decades. The different stages of the Policy Cycle took years to proceed, with many interruptions caused by the most important policy makers sitting in the European Council. However, the process never died, and as a result the Racial Equality Directive came finally into being, the European Union's most important comprehensive legislation framework for the fight against racial discrimination. In chapter 4.2 it will be tried to analyze the implementation and contribute to the verification of this new anti-discrimination framework, the last two stages of the Policy Cycle. However, to complete the picture of the contemporary existing framework a small chapter about how anti-discrimination law developed in the field of sexual discrimination will be introduced.

3.1.6 Age, Sexual Orientation and Disability

In the evolutionary process of anti-discrimination law the fight against racial and ethnic discrimination constitutes only one step on a whole path, because of the before-mentioned intersectionality of different forms of discrimination. The first step of this path, meaning the first group that was acknowledged as being a victim, were women. Because women constitute half of the electorate and potential workforce in the EU, this subject appeared first on the supranational political agenda. Racial and ethnic minorities, one of them being the Romanies who are the primary concern of this thesis, can be considered as the next groups admittedly being victims of discrimination. However, many other forms of discrimination exist, like discrimination against the elderly, the handicapped and homosexuals. The last could be expected as the next big step on the path of anti-discrimination law, and should be shortly commented on in this chapter, in order to stress and illustrate the evolutionary broad character of anti-discrimination legislation.

The topic of discrimination against homosexuals is not new. In 1976 the total prohibition of sexual intercourse between two males was ruled to be a breach of ECHR Article 8. In an ensuing debate in the European Parliament about a resolution on the topic, significant opposition came from Christian Democrats and UK Conservatives (Mark Bell 2004, p. 92). The “Resolution on Sexual Discrimination at the Workplace“, OJ 1984 C 104/46-48, passed anyways, and called on proposals to prevent discrimination against homosexuals “[...] with regard to access to employment and dismissals”.

The perception of homosexual's maltreatment as discrimination is a rather recent phenomenon. The first adoption of an anti-discrimination provision by a Member State of the EU appeared as late as 1985 (c.f. R. Lalement 1998, p. 46). Also, the European Parliament started a debate about sexual orientation discrimination in the 1980's. As late as 1998 the European Court of Justice stated in Case C-249/96 Grant v. South-West Trains, that European law did not cover sexual orientation discrimination. The very slow development pace of this discrimination field can probably be ascribed to great differences in the Member States' cultural, moral and religious beliefs.

Shortly after the implementation of the Racial Equality Directive, the so-called Framework Directive (c.f. Council Directive 2000/78/EC of 27 November 2000), which forbids discrimination on grounds of religion and belief, age, disability and sexual orientation, was adopted. It took on most of the former's key definitions and features, e.g. of direct and indirect discrimination and harassment (c.f. Mark Bell 2004, p. 113). However, the Framework Directive falls short of some of the Racial Equality Directive's strong points. First, it only applies to employment. Second, there is no claim for the establishment of a body for the promotion of equal treatment. Third, in some cases the Directive requires a plaintiff to prove his or her sexual orientation, which creates an obvious conflict with privacy rights. Fourth and most importantly, Article 2(5) of the Framework Directive provides an opportunity for "open-ended justification for any form of discrimination" (Mark Bell 2004, p. 115). It states that

"[this] Directive shall be without prejudice to measures laid down by law which, in a democratic society, are necessary for public security, for maintenance of public order, and the prevention of criminal offences, for health protection and for the protection of the rights and freedoms of others".

As a result of these lines, the Directive is used by some member states as a justification for restrictions on homosexuals to express their sexual orientation in armed forces (P. Skidmore 2001, p. 130).

Sexual orientation does not only conflict with conservative norms, there is also very little data about the repercussions of sexual orientation discrimination on Europe's free market. Many homosexuals have the ability to avoid discrimination by concealment (although the question must be asked to what extent such a concealment strategy has a negative effect on the individual's mental well-being). Hence, it never appeared as a major point on the public policy agenda of the political and economic elite. At this point in time, the effective implementation of anti-discrimination law regarding sexual orientation discrimination seems to be a much more distant than in the case of anti-discrimination law against racial and ethnic discrimination.

3.2 The Impact of Contemporary Anti-Discrimination Law on anti-Gypsy Discrimination and Romani Social Exclusion

In order to evaluate the efficiency of a certain piece of legislation it is necessary to define tangible criteria. In this context, it helps to differentiate between the outcome and output. The output is synonymous with the factual results of political decisions. The outcome, on the other hand, is the answer to the question what the political agents actually achieved. The problem is, that outcomes are not only the result of particular outputs, but also influenced by many other, possibly partially unknown factors (c.f. Sonja Blum/Klaus Schubert 2009, p. 127). If these other factors can be identified during the evaluation phase, it can contribute to the future improvement of the policy. In this chapter, the goal is not to confirm the output in the form of EU anti-discrimination legislation. Far more important, it is an evaluation of the practical outcome of EU anti-discrimination law; in other words the impact on anti-Gypsy discrimination and Romani exclusion.

The impact of EU anti-discrimination law will be revealed by a qualitative analysis of academic publications and reports that deal with the subject of discrimination and social exclusion of Romani people in the EU, which were published after the implementation of the 2000 Racial Equality Directive. Among the literature examined will be studies and publications from the European Union organs such as the Commission, Council, and the European Union Agency for Fundamental Rights, and international organizations such as Amnesty International, and publications by organs under the banner of the United Nations. In addition, case rulings of the European Court of Human Rights are considered, because the 2000 Racial Equality Directive explicitly refers to the European Convention of Human Rights for a to be respected source in the field of anti-discrimination policy and law (c.f. chapter 3.2.1).

Several indicators have to be chosen, in order to manifest a change in discrimination against Romani people. The Directive extends the EU's competence to the areas of health, education and housing, which are traditionally strongholds of national sovereignty (Mark Bell 2004, p. 82). Hence, it is necessary to examine whether discrimination against Romani people improved in the areas of health,

education, services and housing. In addition, it has to be considered that the history of anti-Gypsy discrimination is rife with the expulsion and forced displacement of Romani people that led to great migration movements. EU anti-discrimination law capable of counteracting sufficiently against anti-Gypsy discrimination has to prevent such practices, especially by the states. Possibly the most decisive factor is employment, which is also closely related to the subject of education. The definition of the indicators, and what change should be expected in the respective areas, is the subject of the next chapter.

If anti-discrimination law is to be called efficient, there has to be some tangible change occurred over the last decade. If no improvement can be detected in the respected fields of the indicators, it can be concluded that the anti-discrimination law is inefficient. If improvement can be assessed, then the author assumes that the 2000 Racial Equality Directive has probably had a positive impact, because of the absence of other decisive actors that could have contributed to a large scale change.

There are three major problems that come with this methodological approach. The first problem is that other factors might have contributed to the improvement of measurable Romani social inclusion and are being neglected. In the case other factors have been the decisive element of change in the field of anti-Gypsy discrimination and the social exclusion of Romani people, the results of this thesis will have to be revised. However, to this point the author is unaware of any social projects that are not associated to the demands of the 2000 Racial Equality Directive and big enough to bring about large scale change in whole countries. In addition, the author of this thesis hopes that the method of qualitative analysis of reports, studies and secondary literature will give insight to the question about the origin of possible positive change in the respective fields of the indicators.

The second problem is that in the different Member States of the EU there have always been different national legislation regimes. This did not change with the implementation of the 2000 Racial Equality Directive, because of the very nature of Directives as provisions, which come into effect only after they were converted into national law. In addition, many EU Member States joined the EU only years after the Racial Equality Directive was implemented. These circumstances make an examination and assessment of EU anti-discrimination law a complex task.

However, EU anti-discrimination law is only as efficient as its weakest link. As a result, the method to examine the efficiency of EU anti-discrimination law will not follow the structure of particular countries, but rather the most obvious examples of racial discrimination that were found in secondary literature and academic reports. The author of this thesis believes that if EU anti-discrimination law is revealed to have no impact in one Member State of the EU, then possible positive impacts in other countries are the result of national circumstances and motivations. Hence, the positive effect cannot be inferred from EU law, which renders it as inefficient.

The third problem is that Romani people often do not report crimes committed against them, because they fear that any evidence might be used to their disadvantage. Furthermore, police often neglect to patrol areas where great numbers of Romanies live, which leads to a deficiency of their security. In the Czech Republic it took until 1998 to implement a law that instructed the police to train the recognition of racially motivated crimes (c.f. Rick Fawn 2001, p. 1199). The mistrust of Romanies makes it generally very hard to measure Romani discrimination in quantitative numbers, which tend to be very imprecise. As a result, the indicators will be analyzed qualitatively, with quantitative numbers only contributing in those cases that they appear to be more accurate.

3.2.1 The Derivation of the Indicators from the 2000 Racial Equality Directive

As mentioned before, the 2000 Racial Equality Directive forbids discrimination in a number of areas; in Chapter 1/Scope 1 it says:

"Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

- (c) employment and working conditions, including dismissals and pay;
 - (d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
 - (e) social protection, including social security and healthcare;
 - (f) social advantages;
 - (g) education;
 - (h) access to and supply of goods and services which are available to the public, including housing."
- (Council Directive 2000/43/EC 29.06.2000)

As a result, it can be expected that the Directive, in case the measures to reach its goals are efficiently implemented as required, brings about change in the areas (a) to (h). With respect to the Romani people and the particularities of anti-Gypsy discrimination, the following indicators are chosen to be examined, in order to assess the efficiency of the 2000 Racial Equality Directive: employment, education, access to services and healthcare and housing.

In addition, there should be an assessment of violence against Romani people, which is a subject closely related to expulsion practices of Member States. The Directive explicitly refers to the European Convention for the Protection of Human Rights in Article 3 of the 2000 Racial Equality Directive:

"The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories."

The findings of the European Court of Human Rights (ECHR) are to be respected by all EU Member States, according to the 2000 Racial Equality Directive. As a result, it is necessary to have a closer look at the decisions of the European Court of Human Rights concerning the discrimination of Romani people, and whether the conditions for litigation against Romani discrimination improved.

Because of the close interrelation of some indicator topics, they will be pooled. The structure of the indicators is the following: indicator one will be a qualitative analysis of the ECHR-verdicts and their implementation; indicator two will be a qualitative analysis about the employment and education situation of the Romani people; indicator number three deals with the health condition and services; indicator four is an analysis of housing conditions and segregation; and indicator five an examination of the phenomena migration and forced displacement. After those chapters, there will be a general judgment about the efficiency of EU anti-discrimination legislation in the conclusion of this thesis.

3.2.2 Indicator One –The European Court of Human Rights Litigations

An important contribution to the 2000 Racial Equality Directive was its reference to the European Convention of Human Rights in the paragraphs (3) and (4). A couple of positive court decisions by the European Court of Human Rights (ECHR) in favor of the Romani minority have been made in the last two decades, and led at least to a dissociation of European institutions and senior judges from anti-Gypsy hatred and harassment (c.f. James A. Goldstone 2010, p. 312). Now, in this chapter it is important to explore the verdicts of the ECHR and with regard to Romani discrimination and whether they were actually taken into consideration by EU Member States.

Already during the early 1990's, representatives from Romani groups in Central and Eastern Europe started to take advantage of the European Convention system and the new practice of public interest litigation against human rights offenses against their own kind. Until a couple of years ago the right to be free from discrimination was not explicitly stated under the European Convention. This changed with the implementation of Protocol No. 12 to the European Convention from 2005, and complemented the EU's Racial Equality Directive in many countries of the continent (c.f. James A. Goldstone 2008, p. 316).

James A. Goldstone identifies several remaining obstacles to successful litigation against the discrimination of Romani people. He enumerates the information

deficit and distrust towards state institutions among Romanies, the costs and length of legal proceedings including the “loser-pay rule”, the limited availability of legal aid to assist Romanies, problematic rules of law, procedure and judicial custom, and the persistence of negative stereotypes, attitudes and bias among police, judges, lawyers and other legal system agents (c.f. James A. Goldstone 2008, p. 317).

James A. Goldstone confirms that racial discrimination is one of many reasons for the hardship of Europe’s Romani minority. However, he can present three strategies “[...] developed by advocates who have successfully brought claims on behalf of Roma victims of discrimination and violence before the European Court of Human Rights” (James A. Goldstone 2008, p. 317). The first strategy is described as “process-based arguments in Roma rights litigation”. The legal campaign to gain the European Court’s attention consisted of two approaches. One was to challenge the states’ routine failure to investigate into police violence against Romanies. The other approach was to file complaints against discrimination in all fields of public life like violence, education, housing and access to public accommodations. In the 1990’s these cases primarily referred to a breach of Article 14 of the EC Treaty, because no real anti-discrimination law existed.

The breakthrough in respect of cases against police violence occurred with the ruling of *Assenov v. Bulgaria* at the European Court of Human Rights. In this case, the applicants relied on a process-based argument,

“[...] which contended that the prohibition against torture and inhuman or degrading treatment contained in Article 3 [of the Human Rights Convention] should be understood not merely to prohibit misconduct by the police, but also to impose a positive obligation on the state to investigate allegations of abuse” c.f. James A. Goldstone 2008, p. 319).

Hence, all states which signed and ratified the Human rights convention are obliged to actively investigate any allegations of police violence:

“[The] prohibition of torture and inhuman and degrading treatment and punishment [...] would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity” (*Assenov v. Bulgaria* 1998, Paragraph 102).

Another very important example for a successful process-based argument was *D.H. v. Czech Republic*, where the European Court of Human Rights in a ruling of 2007, for the first time, found a nation-wide education system segregating children on

the basis of race. The court affirmed that in case the applicant can prove a difference of treatment, it is the government's obligation to provide a convincing justification (c.f. James A. Goldstone 2010, p. 320). As a result, the government of the Czech Republic argued that "[...] the applicants were placed in special schools on account of their specific needs, essentially as a result of their low intellectual capacity" (D.H. v. Czech Republic 2006, Paragraph 16). The Court rejected this indirect as a racist argumentation.

The second successful litigation strategy presented by James A. Goldstone is simple persistence: "Over time, the body of evidence documenting discrimination against Roma accumulated both in applications before the Court and in monitoring reports by the Council of Europe, United Nations treaty bodies, and NGOs" (James A Goldstone 2010, p. 321). He pursues that "[only] when evidence of racial discrimination became truly overwhelming did the Court decide to condemn an act of police violence of discriminatory". Romanies went to Court between the late 1990's to the year 2008 before the European Court of Human Rights ruled an incident of police brutality against a Romani as explicitly racially motivated. In the case *Stoica v. Romania*, outside a bar the police beat up a 14-year-old boy at the behest of the bar owner.

The third successful strategy is to focus on evidence of systemic problems. By this he means the accumulation of evidence that led to the assumption by the European Court of Human Rights of structural mistreatment by the police. For example, during a period of five years before the *Assenov v. Bulgaria* case, fourteen Romani men died in police custody or as a result of unlawful use of firearms (c.f. James A. Goldstone 2010, p. 324). The Court was also provided with material of forty-five cases of police abuse with consequential death or serious physical injury of Romanies during the same time period, with none of these cases adequately investigated.

After a vast number of rejections concerned with the discrimination of Romani people at the European Court of Human Rights, in the case *D.H. v. Czech Republic*, the applicants were able to present "[...] a comprehensive data set showing an unassailable pattern of systematic discrimination in one sphere of public life – education" (James A. Goldstone 2010, p. 325). As noted before, the case ended with

the positive ruling that the Czech Republic structurally discriminated against Romani children. James A. Goldstone concludes:

“The past decade has witnessed far more success in shaping the jurisprudence of the European Court of Human Rights than many of us might have anticipated when we embarked on Roma rights litigation in the 1990’s” (James A. Goldstone 2010, p. 325).

Although James A. Goldstone generally admits that success towards Romani social and economic inclusion is hard to perceive, he is able to provide the picture of progress in one of the worst forms of discrimination against Romani people, police violence. With regard to anti-discrimination in other fields, the success in the Czech Republic was probably hardest to accomplish, but also the most worthwhile achievement. This ruling will become even more important when other Courts in Europe start to refer to the ECHR’s findings, in particular the EU’s European Court of Justice (ECJ). Unfortunately, the author of this thesis was not able to find any sources or literature about rulings of the ECJ or its subordinates that dealt with cases of anti-Gypsy discrimination and Romani social exclusion. Despite Romani rights groups threatened France to bring their expulsion policies of Romani people to the ECJ in 2008 (c.f. France24.com 19.09.2010), so far there has been no verdict on this case.

With regard to impact on anti-Gypsy discrimination and Romani exclusion, it seems like the reference of the 2000 Racial Equality Directive to the European Convention of Human Rights is insufficient. In fact, the ruling of the ECHR in the case *D. H. v. Czech Republic* had no practical impact on Czech policies concerning Romani segregation in schools. Amnesty International complaints in a public statement from 15 November 2010 that “[a] National Action Plan for Inclusive Education adopted in March 2010 and presented by the then-government as the blueprint for changing the education system does not address discrimination on the basis of ethnic origin, nor does it include a concrete timeline for the desegregation of Czech schools (c.f. Amnesty International Public Statement 15.11.2010, p. 2). Furthermore, the NGO reports that three years after the judgment there are still thousands of Romani children who are segregated and receive inferior education, some in special schools, and other in mainstream schools which are de facto only for Romanies.

Furthermore, the same Amnesty International Statement accuses Greece of the same neglect with regard to ECHR-decisions (c.f. Amnesty International Public Statement 15.11.2010, p. 2-3). In the case *Sampanis and others v Greece* many Romani children were segregated in schooling as a result of racist incidents, even two and a half years after the final verdict.

All in all, it can be stated that while the ECHR evolved during the past two decades with regard to anti-discrimination rulings concerning the racist discrimination of Romani people, the reference of the 2000 Equality Directive to these rulings exist only indirectly. As a result the rulings were neglected by two EU Member States, the Czech Republic and Greece, which were explicitly convicted by the ECHR for their racial segregation of Romani children at schools. As a result the indicator ECHR litigations suggests an inefficiency of the 2000 Racial Equality Directive.

3.2.3 Indicator Two – Employment and Education

The Indicator Employment and Education, two fields that are so closely interrelated that a pooling appeared to be useful, is already colored by the findings of chapter 4.2.2. The segregation of Romani school children in Greece and the Czech Republic do not only suggest an insufficient reference of the 2000 Equality Directive to the European Convention of Human Rights (including the rulings of its highest court, the ECHR), but also an inefficiency of the 2000 Equality Directive with regard to the fight of anti-Gypsy discrimination and social exclusion in education. It also does not bode well with regard to anti-Gypsy discrimination in employment.

In a survey about health conditions among the Romanies in the EU, published by the European Commission on its website ec.europa.eu, Romani interviewees from Greece, Portugal, the Czech Republic, Slovakia, Romania, Bulgaria and Spain were also asked about their employment conditions. Employment rates laid between 38.2% (Greece) and 61.9% (Bulgaria), unemployment rates between 7.1% (Bulgaria) and 30.5% (Czech Republic). However, the rate of those Romanies who already gave up looking for work laid between 25.1% (Slovakia) and 42.6% (Romania). The average rate of the seven countries lies as 49.9% employment, 15.3%

unemployment and 34.8% inactivity. Because these numbers are based on the subject perception of the Romani interviewees, they have to be handled with caution (c.f. ec.europa.eu 2009, p. 24). It is not clear in the study whether interviewees made a difference between legal or illegal employment, or what they actually classified as work. This survey is one example of how hard it is to work with quantitative data in this topic, and why a qualitative analysis might be of higher value.

A report from the World Bank from 2008 draws a dire conclusion about Romanies employment chances in the Czech Republic (c.f. World Bank 21.10.2008). The key findings of the survey, jointly prepared with the Czech government, are primarily negative (c.f. World Bank 21.10.2008, p. 1-2). First, it was discovered that most Romanies in the Czech Republic were not unemployed, but completely out of the work force, because they have given up to search for jobs. Second, Romanies that lived in marginalized localities suffered widespread illiteracy and low educational attainment. Third, upward educational mobility is practically inexistent. Fourth, indebtedness among Romanies from marginalized localities is widespread, and a barrier for official employment. Fifth, many Romanies rely on social welfare; and sixth support for Romanies to find jobs is humble or non-existent.

Among the Romanies in Austria's Burgenland, long-term unemployment is much more common than among the rest of Austria's population and they suffer the most from recent closings of corporations in the industrial sector. Although new job opportunities in this region open up in other sectors, the Romanies cannot benefit from this kind of development, due to their insufficient education. Indeed, it was common in Austria to send Romani children to special schools until the 1980's. The general unemployment rate of Austria's Romanies in Burgenland was more than 65% in 2005 (c.f. Gudrun Biffl 2005, p. 126). Also, the average life expectancy of Romani people in Burgenland is significantly lower than the life expectancy of Austria's majority population. The former smoke more, gain more weight, and plunge into debts, all indicators for a significantly lower living standard, and symptoms of a high unemployment rate several years after the implementation of the 2000 Racial Equality Directive.

A more positive example from Western Europe is Spain. While Romanies lived marginalized lives and were neglected during the authoritarian rule of Francisco

Franco from 1936 to 1975, this changed after Spain's democratization period. Its public administration enforced social policies that improved literacy and integration into the labor market among Romanies, and their housing conditions (c.f. <http://www.economist.com/node/11579339>). Unfortunately, Eastern European countries lack such an assertive public administration.

Many Romani people are still structurally barred from the job market, leading to unemployment rates of close to 100% in some regions of East Slovakia (c.f. Anna Caroline Coester/Monika Pfister 2005, p. 121). With regard to the research question of this thesis, it must be considered that the improvements in Spain were not caused by EU anti-discrimination legislation. Slovakia on the other hand, admittedly joined the European Union only in 2004, but the preparations for the entrance into the Union had to start earlier, in order to meet the deadline on 1 May 2004 (c.f. eubusiness.com 27.06.2007). At least, one has to conclude from this example that the 2000 Racial Equality Directive has not had any positive impact on national anti-discrimination law concerning racial discrimination during the accession process of the new Eastern European Member States, which may partly be the case because Slovakia had not sufficiently implemented the Directive's demands into national law before 20 November 2009 (c.f. European Union Programme for Employment and Social Solidarity 11.2009, p. 14).

One Romanian example confirms this assumption. Many Romanian schools segregated Romani from other school children two years prior to that country's EU accession in 2007 (c.f. Costel Bercus 2005), and the author of this thesis could not find any evidence that these conditions changed within the last years. The segregation is not de jure, which means it is not legal in Romania's education sector to segregate Romani children. Segregation happens de facto, in the absence of an official policy, and local public officials support it because they do not perceive it as discrimination (c.f. Costel Bercus 2005, p. 44). The Romanian surveillance body for racial discrimination NCCD (National Council for Combating Discrimination), an obligatory institution in Romania since the legal implementation of the EU Racial Equality Directive, is able to and in fact speaks out warnings with regard to ethnical segregation in schools. Unfortunately, these warnings are without consequences, because the NCCD has no power to sanction schools or municipal districts (c.f. Costel Bercus 2005, p. 45).

However, success in Romania's education system could be observed at the university level. With the enactment No. 3577/1998 the ministry for education ordered 149 places for Romani students at eight universities. Not only were the quota frequently increased in subsequent years, but the universities regularly overachieved these demands (c.f. Costel Bercus 2005, p. 38). In addition, a distance learning program to become a Romani teacher was started, which qualified graduates to educate in the Romani language, history and culture. However, the existence of the 2000 Racial Equality Directive had not much to do with it. The official quotas were introduced long before the Directives implementation, and it seems likely that the universities as a realm of liberal and progressive research are primarily behind the further advancement of this success story, as the overachievement of state quotas suggest.

In a report from the EU information campaign "For diversity. Against Discrimination" conducted under its president Rita Süßmuth, it is stated that in the EU there are huge gaps between the unemployment rate of Romanies and the respective majority populations (c.f. Rita Süßmuth 12.2007, p. 35). Furthermore, Romanies run the highest risk of social and labor market exclusion. This fact is ascribed to the poor educational attainment of Romanies. In Hungary, the reports claim that Romanies are mostly concentrated in isolated rural areas which only offer agricultural jobs. It is further lamented that Romanies lack the mobility to change this condition. In general, in Central and Eastern Europe, the Romanies are the first to be laid-off and their access to decent jobs and welfare entitlements is considered as very limited (c.f. Rita Süßmuth 12.2007, p. 41).

A Romani journalist named Jarmila Balazova is also cited in the report, who bewails the fact that in Eastern Europe many Romani children who are about 15 years old today have never seen their parents at a normal work, which leads to the teaching of an incorrect model of behavior (c.f. Rita Süßmuth 12.2007, p. 44). Non-discrimination policies of the new Eastern European Member States are considered as weak, partly because they lack a longer tradition (c.f. Rita Süßmuth 12.2007, p. 45).

The costs of Romani economic exclusion are enormous, as the World Bank calculates that "[lower] bound estimates of annual productivity losses range from [...]"

367 million Euros in the Czech Republic, 526 million Euros in Bulgaria, to 887 million Euros in Romania“ (c.f. World Bank 04.2010, p. 1). In respect to education it is stated that

“[t]he annual fiscal gains from bridging the employment gap are much higher than the total cost of investing in public education for all Roma children; by a factor of 7.7 for Bulgaria, 7.4 times for the Czech Republic, [and] 2.4 times in Romania [...]“ (World Bank 04.2010, p. 1)

Such calculations are not unique to Romani people in the European Union. For example, in the United States Rhonda Reynolds argued back in 1993, that the American economy lost about 1.5 to 2.2% economic growth over a period of 25 years because "racism limits the full use of black educational attainment" (Rhonda Reynolds 1993, p. 27). In general, there is a clear economic interest for social and economic integration of socially and economically disadvantaged ethnic minorities.

The social status quo regarding Romanies employment in Europe is a huge waste of human resources. Contemporary EU anti-discrimination legislation is not sufficient to overcome the problems of social and economic exclusion, because it is still inefficient in some areas, and because ethnic discrimination is only one part of the problem. Also the indicators education and employment suggest that EU anti-discrimination legislation is inefficient in changing discrimination and social exclusion of Romanies for the better.

A scholar who occupied herself with EU anti-discrimination legislation and its improvement and with the particular focus of its impact on Romani people coming for work to Scotland is Lynne Poole. She closely examined Scotland's national policy towards the so-called A8-immigrants, which are internal immigrants from the new European Member States, and compared them with the aspirations of EU anti-discrimination policy. Thereby she discovered counterproductive measures, which denied Romani people from Poland, Hungary, Slovenia, Estonia, Lithuania, Latvia, the Check Republic and Slovakia, to integrate into the labor market and consequently into the mainstream society.

From the year 2000 on, Great Britain developed the so-called National Action Programmes for Social Inclusion (NAP's). They were “[...] part of the remit of the EU Commission's Directorate General of Employment and Social Affairs [...]” (c.f. Lynne Poole 2010, p. 253) to eliminate poverty and social exclusion, in particular with

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regard to vulnerable groups. Hence, Romani inclusion is one of the main tasks to be achieved. One NAP with the title “Working Together: UK National Action Plan on Social Inclusion 2006-08” identifies actions against child poverty as of primary importance. It should be accomplished via the promotion of financial security to poor families and an increase of income through participation in the labor market. The NAP “[...] commits the government to the development of inclusive policies and services across the country” (c.f. Lynne Poole 2010, p. 254).

Unfortunately, Lynne Poole discovers that UK national law actually counteracts the goals of the NAP. Not only does the the British welfare system prioritize British workers and their families, which led to a subordinated inclusion of racial and ethnic minority groups in the labor force. There are, in addition, so-called “Transitional Arrangements” for all A8-immigrants, discriminating particularly against people from the new EU-Member States, by further restricting access to public funds (c.f. Lynne Poole 2010, p. 255). In practice, this means that the rights of people from the new Member States to movement, employment, education, retirement, family reunion and welfare are severely restricted. A8-migrants cannot claim public funds if they are not or only short-term employed.

For Romani people, these UK policies are of grave consequences. If they emigrated from the new Member States under underprivileged conditions, they have no access to public funds, which again reinforces their social exclusion. One problem is that migrants from the new EU Member States are required to register with the Worker’ Registration Theme (WRS) within 30 days before starting their work in Great Britain, in order to receive a 12 months valid Worker Registration Card (Lynne Poole 2010, p. 257-258). The registration requires a fee of 90 British Pounds and a letter from the employer, two potential barriers for many Romani people, because they are often illiterate or might not even know about this registration duty. Employers might be unwilling to hand over letters for registration, because they want to pay below minimum wages for unskilled labor. In addition, British Job Centers and other state services are hard to access because of their complicated regulations (Lynne Poole 2010, p. 258).

As a result of such complicated conditions, many Romani people in Scotland become solely dependent on private employment agencies and “gangmasters” (c.f.

Lynne Poole 2010, p. 259). The latter lure Romanies and other poor people from Eastern European countries to the United Kingdom with deceitful promises, in order to exploit their cheap labor and weak social and legal conditions. On the other hand, if workers from A8-countries succeed to legally register, they become eligible to apply for in-work benefits such as child tax credit, working tax credit, child benefit, housing benefit and council tax benefit, and have a right to claim job seekers allowance and income support as soon as they are employed for a period of 12 months or longer.

Although A8-immigrants are eligible to apply for public housing, unregistered workers with a wage decisively below the legal minimum are dependent on the private rent sector and extremely vulnerable to homelessness (c.f. Lynne Poole 2010, p. 261). Romanies in this respect often face the problems of sub-standard conditions, overcrowding and non-existent tenancy agreements.

It should not remain unmentioned that the so-called A2-migrants from Bulgaria and Romania, face even bigger restrictions in Great Britain than A8-migrants. They are neither eligible to the labor market nor to recourse on public funds. Employment is restricted to quota systems in the agricultural and food-processing sectors, and to those who qualify for the Highly Skilled Migrant Programme. A2-citizens can also enter the UK if they are able to “[...] demonstrate their financial independence and self reliance without recourse to either public funds or the British labor market” (c.f. Lynne Poole 2010, p. 262).

De facto, there is hardly any legal difference between an A2-citizen and a non EU-citizen concerning immigration laws. Instead of extending the principles of anti-discrimination and social and economic inclusion to third country nationals living within EU-boundaries, the opposite is practiced by creating first and second class EU-citizens, with those countries that are home to the poorest Romanies at the lower end of the hierarchy.

It can be concluded that discrimination against migrants from those EU-countries, which are responsible for the majority of Romanies on the run counteract EU social inclusion policies that try to improve the social standings of Europe’s most vulnerable ethnic minority group. Such policies make the EU-initiated National Action Programmes for Social Inclusion appear like no more than elusive cosmetic. It shows how important it is to integrate the strategy of mainstreaming of anti-discrimination

law and policy into general EU and national law, in order to efficiently fight policies that neutralize social inclusion policies in favor of vulnerable minority groups.

As long as national law efficiently counteracts and neutralizes anti-discrimination and social inclusion efforts on the supranational level, it is impossible to resolve the problem of Romani social inclusion, especially in the labor market. EU anti-discrimination legislation will only make its positive contribution to an improvement of the Romanies' conditions regarding labor and education, if it is established in a manner to defeat structural direct and indirect discrimination on the national level.

3.2.4 Indicator Three – Health, Services and Housing

An important indicator for discrimination and social exclusion are the health conditions and provision of health- and other services. In this category, conditions for Romanies appear to be still bad, although this is not only attributable to discrimination.

One survey conducted in Hungary reveals the differences between inhabitants of Romani settlements and the majority population (c.f. Zsigmond Kosa et al 2007, p. 853). In the same survey it was also revealed that the Romanies were less educated and employed, had a lower income, worse living conditions, and weaker social support than the majority population. However, the mean income of Romanies was a bit higher than the income of people from the poorest quarter of the general population. The self reported health status of Romanies is abysmal (c.f. Zsigmond Kosa et al 2007, p. 853). Among the age group 45 to 64 even the poorest quartile of the general population fared better in this category. A comparison of people above 64 was not even possible, because the number of Romanies who reached this level and could participate was too low.

These conditions surprise one little once the backgrounds are taken into consideration. Romani people make less use of health services than the majority population, although the numbers are comparable with the poorest quartile.

According to the survey, 69% of Romanians believe that discrimination related to health service was a matter of their race or ethnicity, while 18% believed their social status was the decisive factor. Only 6% of the general population believed that discrimination against them was based on racism, 5% on their social status. These numbers confirm the fact that Romani settlements are often underserved by essential services, because staff for service provisions nearby Romani settlements is hard to find (c.f. Zsigmond Kosa et al 2007, p. 857). The conductors of the survey also report that “[...] settlements were often characterized by illegal garbage deposits and an absence of drainage, gas mains, and paved roads. Many settlements are built on ground that becomes waterlogged after rainfall.”

The bad health conditions of Romanians are not only a matter of discrimination. They can partly be ascribed to bad habits. They smoke two to five times more cigarettes than the general Hungarian population, and cook with decisively less vegetables and fruit. Such a bad life style among Romani people is in all likelihood intertwined with the problem of educational deficiencies. What a healthy diet should consist of is something people need to learn and adopt, a problem not restricted to Romanians.

In Western European countries prospects are not necessarily better. A similar study as the one in Hungary was conducted in Italy, published one year later (c.f. Lorenzo Monasta et al 2008). It was focused on minority children's health, and revealed terrible conditions. The Romanians in Italy's "nomad camps" came primarily from the former Yugoslavia one decade ago, but today the majority of them are originally from Romania, hence EU citizens. During the case study it was revealed that “[...] 32% of the children suffered from diarrhea, 55% had a cough, and 17% experienced respiratory difficulties within the last 12 months. The surveyors believe that these conditions are linked to overcrowding, bad housing conditions, the use of wood-burning stoves, rats, and bad sanitation and drains.

The before-mentioned survey about health conditions in Greece, Portugal, Romania, Slovakia, Spain, Bulgaria and the Czech Republic published by the European Commission on its website in 2009 offers a different picture. The self-perception of Romanians in this study is not decisively worse than among the general population (c.f. ec.europa.eu 2009, p. 31). However, the Romani people are also

decisively younger than the majority population, due to the Romanies' shorter life expectancy, which not only distorts the picture, but is also a strong indication for bad health conditions by itself (c.f. ec.europa.eu 2009, p. 17-18).

The same survey also offers numbers of actual health problems, and it is revealed that Romani people have worse health conditions and suffer more chronic diseases than the EU majority population (c.f. ec.europa.eu 2009, p. 33-34). Romani people also suffer from a lot more accidents than the general population, from which nearly half happen at home. It is revealed in the study that "[...] living in poorly integrated and unhealthy neighbourhoods or in sub-standard housing are key in explaining the high percentage of accidents suffered by the Roma population" (c.f. ec.europa.eu 2009, p. 38). This insight also gives a preliminary idea for the next chapter about housing and segregation, and shows how all these phenomena are intertwined and augment each other.

With regard to the provision of health care, the survey claims that Romani people, as expected, have more problems to receive proper medical assistance than the general population (c.f. ec.europa.eu 2009, p. 49). Most interviewees stated that their bad economic situation was to be blamed, with 22% of the Romani people lacking sufficient funds, 12% claiming that their health insurance did not cover their last visits to the doctor, and 11% lacking health insurance at all. Once again, because this survey based on the self-perception of the Romani interviewees, these numbers have to be considered with great caution.

Also access to public utilities and infrastructure is still impeded for many Romani people in the European Union. The Committee on Economic, Social and Cultural Right, a UN body, demands that houses

"[...] must contain facilities essential for health, security, comfort and nutrition [...] [and] sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency service" (c.f. ec.europa.eu 2009, p. 66).

The FRA summarizes points out that large numbers of Romani people in the Slovakia are cut off from public services such as gas supply (59%), sewage (81%) and water supply (37%) (c.f. ec.europa.eu 2009, p. 67). Other bad examples are Romania where Romanies are also greatly disadvantaged in access to public utilities,

and Greece, where 350 Romani families lived in tin shacks under inhumane conditions, according to a Grecian study (c.f. ec.europa.eu 2009, p. 67). In other EU Member States, like Slovenia and Spain, the conditions are reported to be better.

All in all, it turns out that health conditions of Romani people are decisively below the general population's average, and it is definitively a greater problem for Romanies to receive proper health care; there is not much evidence that the implementation of the 2000 Racial Equality Directive contributed to a diminishing of discrimination in the health sector against Romani people. Of course, it is hard to say to which degree bad health conditions are only the result of discrimination and to what extent bad habits influence the outcome of this indicator. However, bad health condition appear to be strongly interconnected with the general poor economic conditions the Romani people live in, and bad housing situations. It can be expected that health conditions would get better as soon as the economic and dwelling conditions improve.

3.2.5 Indicator Four – Segregation and Forced Evictions

Before and after the admission of the new Eastern European Member States to the EU, not much was done with regard to social segregation and terrible housing conditions of Romani people. In 2004 there were 600 Romani slums In Slovakia where people lived under abhorrent conditions. Financial support from the EU in the same year accounted for only 30 of these settlements, only a token gesture. In addition to the slum problem, Romanies always receive the same dwellings when applying for public housing, which leads to a de facto segregation (c.f. Anna Caroline Coester/Monika Pfister 2005, p. 121).

To this day, it seems these conditions have not changed very much. The European Union Agency for Fundamental Rights (FRA) published a report with the topic housing conditions in October 2009, which also included detailed information about segregation in general. Already in its foreword, the Agency claims that

"[...] clearly [...] many Roma and Travellers [sic] in the EU continue to live in conditions which fall far below the minimum standards for adequate housing, and that their substandard, insecure and often segregated housing conditions lead to major problems for Roma and Travellers [sic] in other areas of life, such as education, employment and health. [...] The report also demonstrates that direct and indirect discrimination against them in access to housing remains widespread. Forced evictions of Roma and Travellers [sic] still occur in a number of Member States." (FRA Comparative Report 20.2009, p. 4)

Admittedly, the FRA recognizes a general growing recognition among national governments for the need to improve the housing conditions of the Romanies, but it is also states that there is still a lot of work ahead to "[...] break the vicious cycle of exclusion, segregation and deprivation rooted in inadequate access to housing" (FRA Comparative Report 20.2009, p. 4).

The FRA also assessed a lack of official and systematic data about forced evictions in EU Member States, but states that there is evidence that these have taken place within the last decade in countries like Slovakia, Bulgaria, Greece, France, Ireland, Poland, Belgium and the United Kingdom (c.f. FRA Comparative Report 20.2009, p. 58-59). But there are also positive examples: in Spain and Slovenia a great number of Romanies actually live in their own houses, thanks to specific government programs (c.f. FRA Comparative Report 20.2009, p. 59). As a result, they are to a great extent safe from arbitrary evictions and homelessness.

Amnesty International published a report about forced evictions in Europe on April 8 2010. The non-governmental organization reported that forced evictions were documented in cooperation with local NGOs in the EU Member States Greece, Bulgaria, Italy and Romania (c.f. Amnesty International 08.04.2010, p. 2). It is stated that

"[in] most cases of forced evictions, the authorities make no attempt to offer Roma residents adequate alternative housing and many continue to live in temporary and makeshift accommodation for years after they have been evicted. Many are also likely to be evicted again and again." (Amnesty International 08.04.2010,p. 2).

Amnesty International admits that not every eviction carried out is a forced eviction (c.f. Amnesty International 08.04.2010, p. 3). However, the organization insists that appropriate safeguards are to be followed during a lawful eviction, and that these are specified in international law:

"The UN Committee on Economic, Social and Cultural Rights has emphasised in its General Comment 7 that evictions may be carried out only as a last resort, once all other feasible alternatives to eviction have been explored. Even when an eviction is considered to be justified, it can only be carried out when procedural protections are in place and if compensation for all losses and adequate alternative housing is provided." (Amnesty International 22.12.2010)

The reference of Amnesty International to the UN Committee on Economic, Social and Cultural Rights is also important with regard to the 2000 Racial Equality Directive, because in Article 3 it refers to "[...] the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights [...]" (Council Directive 2000/43/EC 29.06.2000), although only broadly in the context of discrimination, and not the specific rights quoted by Amnesty International (in the last paragraph).

Unfortunately, one can only conclude that the reference is not specific enough and being ignored by many EU Member States, if one takes into consideration the documentation of Amnesty International from recent years. 200 Romani people, including children and elderly people were left homeless after a forced eviction in the 40 years old Gorno Ezerovo and Meden Rudnik settlements in Bulgaria in September 2009 (c.f. Amnesty International 08.04.2010, p. 4). In June 2007, 100 Romani families were forcibly evicted from their settlements in Votanicos after living there for over ten years. In 2008 the families were relocated again, and reported of constant harassment by the police afterwards (c.f. Amnesty International 08.04.2010, p. 5). In Italy, according to Amnesty International, forced evictions by Italian authorities have been common in the last decade, but increased in frequency since 2007 (c.f. Amnesty International 08.04.2010, p. 6). In addition, in 2008 the so-called "Nomad Plan" was implemented, which conferred special powers to a number of Italian prefects, and "paves the way for the forced eviction of thousands of Roma from all type of settlements in the capital" (Amnesty International 08.04.2010, p. 6). A commonality of these forced evictions in different EU Member States is a breaking of international law (c.f. Amnesty International 08.04.2010, p. 7): Residents of settlements were often not given reasonable time to remove their possessions; they were not given information about legal remedies against the eviction; and they often were not offered adequate housing before the eviction took place, if at all (c.f. Amnesty International 08.04.2010, p. 7). All in all, the findings of Amnesty International suggest that heavy violations of international agreements in favor of

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human rights regarding eviction processes still take place within the EU, and that these violations primarily target the Romani minorities in these countries, which again is a clear break of EU anti-discrimination legislation.

In Romania, the country with the largest number of Romani inhabitants, many projects to decrease Romani discrimination and exclusion were started in order to become eligible for EU accession. At the beginning of the last decade, the requirements of the Racial Equality Directive were converted into national law (c.f. Irina Nicoleta Dura-Nitu 2008, p. 137), but the situation of the Romanies remains highly problematic. According to a report from the European Union Agency for Fundamental Rights from 2009, fewer Romanies (25%) perceive discrimination in Romania within a period of 12 months than in other Eastern European EU member states like the Czech Republic (64%), Hungary (62%), Poland (59%), Greece (55%), Slovakia (41%) and Bulgaria (26%) (FRA – EU-MIDIS 2009, p. 4). However, this is less a result of an efficient anti-discrimination regime, than of spatial segregation between Romanies and non-Romanies.

The FRA housing report from October 2009 claims with regard to segregation that this phenomenon is evident in many EU Member States, in some cases even as a result of government policy (FRA Comparative Report 20.2009, p. 5). In addition, some housing projects with the purpose of improving the living conditions of Romani people even further isolate and segregate Romani communities, and having an address in Romani areas is an obstacle for employment. If Romanies do not possess a home legally, their tenure on security is highly at risk, because instances of forced evictions appear to happen "en masse" (FRA Comparative Report 20.2009, p. 6), even in cases of regular rent paying. In many cases, authorities still fail to provide proper dwelling alternatives. Romanies still experience discrimination from many directions. Local authorities deny access to social housing by measures that discriminate directly or indirectly against them, and non-Romani neighbors pressure landlords to deny access to housing communities (FRA Comparative Report 20.2009, p. 6).

The FRA report also gives an evaluation of the impact of the 2000 Racial Equality Directive on the housing conditions of Romani people. In fact, only about 10% of Romanies who experienced discrimination against them in housing reported

this incident, because they did not believe that it would make a difference, or they were not even aware of how to report such an incident (FRA Comparative Report 20.2009, p. 24). As a result, discrimination against Romanies is extremely underreported. As long as Romanies do not know anything about anti-discrimination law in their favor, or just do not believe in the efficiency of such an instrument, the framework is little more than just a symbolic gesture of the EU institutions. This impression is being reinforced by the fact that from 550 housing related complaints of Romani people that were filed at the equality bodies and Ombudsmen between 2000 and 2009, in only 35 a violation was found or a settlement reached (FRA Comparative Report 20.2009, p. 22).

Another point the FRA reveals is that the quality of implementation of the 2000 Racial Equality Directive varies drastically between the different EU Member States. One reason for this is that mandatory equality bodies, which the EU Member States had to implement in order to conduct independent surveys and make legal recommendations regarding discrimination, enjoy very different degrees of competences. In some States they possess the power for sanctions or to start legal proceedings; in others they do not (FRA Comparative Report 20.2009, p. 19). The lack of such capabilities seems to be one of the great weaknesses of the 2000 Racial Equality Directive, and resulted in a very heterogenic patchwork.

So far, ethnic segregation could not be decisively counteracted. Especially in Romania and Bulgaria, and to a lesser degree in all other Eastern European EU Member States, Romanies live in parallel societies. In the face of terrible living conditions and the underperformance of schools and classes with a majority of Romani pupils, which reinforces structural poverty, seclusion and educational deficiencies, this isolation of an underprivileged ethnic group is a curse for the European Union and its Member States. The author of this thesis takes over the assessment of the FRA in its housing report from October 2009 that the 2000 Racial Equality Directive has had only spotty and therefore insufficient impact on Romani housing conditions, (c.f. FRA Comparative Report 20.2009, p. 19). By this indicator, EU anti-discrimination legislation has to be labeled unsatisfactory and sparsely efficient.

This chapter is now being ended with a quotation from the Council of Europe Commissioner for Human Rights, who wrote in a letter to the Greek Interior Minister in 2006, and gives a strong impression about anti-Gypsyism in the context of forced evictions in Greece:

"I met with a family whose simple habitat had been bulldozed away that same morning. It was obvious that the 'procedures' for making them homeless were in total contradiction to human rights standards [...]. I was also disturbed to notice that non-Roma people appeared on both sites during my visit and behaved in an aggressive, threatening manner to the extent that my interviews with some of the Roma families were disturbed." (www.coe.int 10.10.2009)

3.2.6 Indicator Five: Migration and Forced Expulsion

One apparent way to illuminate the issue of discrimination against Romanies today is to look at their migration behavior. At the present time borders are open for Romani migration movements from Eastern to Western Europe, thanks to the EU guidelines concerning the freedom of movement and establishment to all EU citizens. The feared "migration wave" of Romani people from East to West never appeared. In fact most Romani people who migrated into Western European states were from the "Romani socialist style middle class" of the communist era (c.f. Imrich Vasecka/Michal Vasecka 2003, p. 37). These Romanies lost their jobs in great numbers after the breakdown of the Iron Curtain in 1989, and as a result lost even the modest social standard they could obtain during the communist regimes' assimilation policies.

Neither the elite nor the very poor among Eastern Europe's Romanies had a comparably strong incentive to leave their home countries, despite continuous discrimination, police violence and frequently occurring pogroms committed by extreme nationalists. Imrich and Michal Vasecka claim that "Roma who live in a desperate social situation in segregated Romani settlements do not migrate: their social exclusion is absolute" (Imrich Vasecka/Michal Vasecka 2003, p. 37). It is Romanies who enjoyed a temporary social ascendance before they were pushed back into poverty who try their luck abroad. Max Matter agrees with this notion; he claims:

“dass es nie die Armen der Armen waren, die sich auf den Weg gemacht haben, dass es Jahre brauchen wird, bis die von einer “Kultur der Armut geprägten und schlecht organisierten Roma nicht nur eine Migrationsbereitschaft äussern, sondern den Migrationswunsch auch umsetzen” (Max Matter 2005, p. 27).

This fact suggests that Romani migration is primarily motivated by economic incentives, the wish to leave poverty. The question remains, however, why Romani people do not believe that they can successfully improve their economic and social status in their home countries, but instead need to move to another country in order to reach this accomplishment.

One example that drew a lot of international attention for a limited period of time is the migration history of Slovakia. In 1999, it began with the so-called Romani “exodus” to Finland (c.f. Imrich Vasecka/Michal Vasecka 2003, p. 28), an attempt of 1000 Romanies for asylum, and resulted in social strains between the majority population of Slovakia and the Slovak Romanies. The Slovaks feared for their country’s chances to enter the European Union, and accused their Romani minority of “Ethno-tourism”.

A survey conducted among Slovak Romanies in 2003 came to the conclusion that four major factors lead to emigration (c.f. Imrich Vasecka/Michal Vasecka 2003, p. 35). The first factor is the existence of a role model. In such cases, successful Romanies from abroad shared their experience and methods to ascend economically and socially abroad with others of their kind. The second factor consists of legislative measures and profit calculation, which means that some Romanies during their time abroad have managed to save significant amounts of money, which contributes to emigration incentives. The third factor consists of organized migrations and state authority indifference. This means that local usurers, often Romanies themselves, forced their debtors to emigrate in order to be able to pay off their liabilities. Last but not least, the forth factor the researchers of the Slovak study present is racially motivated violence and feelings of helplessness. However, they stress the fact that most asylum seekers have not been victims of racial assaults and conclude: “The main objective of the Romani emancipation endeavour is to overcome deepening economic, social, cultural and political exclusion” (Imrich Vasecka/Michal Vasecka 2003, p. 36).

Unfortunately, targeted expulsion of Romani people has not been prevented after the implementation of the 2000 Racial Equality Directive, even though such racial discrimination is strongly prohibited. Especially during times of economic uncertainty and/or decisive social and political changes Romanies become, again, the scapegoats of the majority's rage, and often victims of violent pogroms or reactionary discriminatory policy proposals. This happened in Italy in 2008 when a 17 year old Romani woman was arrested for allegedly baby stealing, which led to a public anti-Gypsy outburst, resulting in the burning down of several Romani settlements. In the wreckages even the remains of Molotov Cocktails were found (c.f. Julius Müller-Meiningner 2008).

Despite the existence of EU anti-discrimination legislation unambiguously forbidding discrimination on racial grounds, anti-Gypsy discrimination is still instrumentalized by European Union Member State's governments. Italy and France, two of the „old“ EU-15 members, engaged anti-Gypsy actions, in 2008 and 2010 respectively. In Italy, interior minister Roberto Maroni ordered police raids against Romani settlements, which were supplemented by civil violence against the Romanies (c.f. Der Spiegel 16.05.2008). He also introduced the proposal to fingerprint all Romanies including children, allegedly as a measure to fight begging and stealing (c.f. bbc.co.uk 16.06.2008). Maroni also met with his Romanian counterpart in order to discuss further steps against Romani immigration to Italy. It is unlikely that these anti-Gypsy policies can reduce the crime rate in a country beset with mafias and other structurally criminal organizations. Romanies merely became scapegoats for political and social failure, which once again led to their forced expulsion.

In 2010 in France, Nicolas Sarkozy supported a repatriation policy of hundreds of Romanian Romanies. Like in Italy, this policy targets people from an ethnic minority that are de jure citizens of an EU Member State. Despite the EU's law for free movement, France requires a work permit and proof that people can support themselves. The European Commission reacted with strong criticism to the events, but attacked France primarily for its flawed implementation of the Directive on Free Movement (c.f. europa.eu 29.09.2010). Under point 3 of the Directive it also took explicit note that „[measures] taken by the French authorities since this summer did

not have the objective of the effect of targeting a specific ethnic minority, but treated all EU citizens in the same manner“.

Two conclusions can be made from the Commission's press reaction. First, there is a lack of political will and power to officially condemn France for its clear break of EU principles. In their first reaction, two commissioners accused France of discrimination against ethnic minorities and racism (c.f. World Socialist Web Site 16.09.2010), but these accusations were not taken over by the Commission as official viewpoint. Second, anti-discrimination law in its contemporary form appears to be inefficient in this matter. The Romanies who were deported probably lack knowledge and financial means to defend themselves in court, and unions and other organizations would not be eligible to submit and advance cases of discrimination (c.f. chapter 3.1.5).

4. Conclusion

In order to draw a conclusion, it helps to recall the original research question of this Diploma thesis from the first chapter:

Is EU anti-discrimination legislation efficient, evaluated by means of its evolutionary process and impact on anti-Gypsy discrimination and Romani social exclusion?

The answer to this question is unambiguously negative. The climax of anti-discrimination law, the 2000 Racial Equality Directive, fails to have a decisive positive impact on anti-Gypsy discrimination and Romani social exclusion, according to the examined indicators. In addition, the development process of EU anti-discrimination legislation suggests that the implementation of the 2000 Racial Equality Directive was little more than a token gesture in the face of right extremist success in several EU Member States, despite the EU Parliament's greater influence of its content.

The case study of the Romani people was picked as the most visible example of discriminatory social exclusion of an ethnic minority group. First, the historical and cultural embeddedness, as well as the social and psychological purpose of anti-Gypsyism and anti-Gypsy discrimination was examined. In order to develop a more sophisticated understanding of the case study's research object, Romani history and in particular the history of persecution and discrimination were explored in greater detail. The structural phenomenon of anti-Gypsyism, the particular form of racism Romanies have to endure in Europe was also introduced, which is at the root of discrimination against Romani minorities.

Next, it was important to have a closer look at the extermination policies during the Third Reich, in order to pronounce the seriousness and potential destructiveness of anti-Gypsyism, and to reveal the continuity of anti-Gypsy thought within official institutions after World War II. It made sense to offer a comparison between anti-Gypsyism and anti-Semitism in this context, because the history of persecution of Romanies and Jews overlapped to a great degree. The research material suggests that anti-Gypsyism traditionally embedded in European culture among Europeans is a great obstacle for the implementation of anti-discrimination law. All in all, it was

necessary to see discrimination and persecution of Romanies in its historical context, to stress the fact that anti-Gypsyism is deeply rooted in the social culture of most European nations, similar to the ubiquitous existence of different forms of anti-Semitism.

The theoretical background of the Policy Cycle was then introduced in order to give the evolutionary tracing of EU anti-discrimination legislation structure; up to the implementation of the centerpiece of EU anti-discrimination legislation, the 2000 Racial Equality Directive. The Market Integration and Social Citizenship Model offered explanations why anti-discrimination legislation developed in a rather slow and arduous way. The manner this anti-discrimination Directive came into being already boded ill for its efficiency prospect; in other words the Directive was pushed through the legislative process by actors whose primary worry was the political success of right extremist political parties. It already indicated that violations of the Directive like deportations based on racial profiling, as it happened in recent years in France and Italy (c.f. , would not be efficiently prevent. In order to measure the efficiency of EU anti-discrimination legislation using the example of anti-Gypsy discrimination and Romani social exclusion, five pooled indicators were defined against the backdrop of the 2000 Racial Equality's bans and commandments. These indicators were evaluated with the help of reports published by EU bodies and NGO's concerning anti-Gypsy discrimination after the implementation of the 2000 Racial Equality Directive, augmented by secondary literature dealing with the subject of Romani discrimination and social exclusion.

The results suggest that EU anti-discrimination legislation is not tough enough in practice to stop discrimination against underprivileged Romani people, because no real change in anti-Gypsy discrimination could be observed over the last decade, and there is a definitive lack of political will for consequent enforcement of EU anti-discrimination legislation. In addition, most Romani people do not know about their newly established rights, and if they know, they mostly do not believe that they have a real chance by filing an official complaint. The assumption that anti-discrimination law is inherently inefficient, because Romani people are still to a great degree discriminated against and socially and economically excluded, could be confirmed.

The claim of anti-discrimination as a founding principle of the European Union can only be partly confirmed. Indeed, anti-discrimination law existed from the beginning in the European Community, but at first only in rudimentary form, restricted to discrimination against EU-national minorities and women in the labor market, and of no noteworthy practical impact. The evolution of anti-discrimination law remained sluggish for a long time, with the exceptions of economic incentives related to the idea of a single market and external shocks.

EU law prohibiting racially motivated discrimination decisively evolved within the last two decades and in particular at the turn of the century as a result of political and normative pressure from the political extreme right. The substance of the contemporary anti-discrimination framework against racial discrimination is comparable with the anti-discrimination regime against sexual inequality, although it does lack the all important approach of mainstreaming. Indeed, some national legislation still foils EU anti-discrimination policies, as it was shown by the British example of exclusive national legislation concerning the so-called A8 immigrants.

Recent studies about the social and economic conditions of Romani people, in particular in Eastern European countries, show that progress towards inclusion has been made on only small scales. Encouraging results of positive discrimination on the university level are overshadowed by the fact that racial segregation of Romani pupils is still common in some Eastern European EU Member States. Fortunately, a recent ruling by the European Court of Human Rights rightfully stated that the entire school system of the Czech Republic systematically discriminates against Romani children (c.f. chapter 3.2.2). Indeed, the ECHR is not an institution of the European Union, but the European Convention of Human Rights are explicitly referred to in EU anti-discrimination legislation, but is obviously in a too lax, and without any practical consequences.

Some positive impacts come from the establishment of the EU Monitoring Center on Racism and Xenophobia in Vienna, which offers a great variety of reports and survey's about discrimination against Romani people in the EU, and a general higher sensitivity of EU institutions against large-scale breaches of anti-discrimination principals. Indeed, a small number of European Commissioners harshly attacked French and Italian mass deportations of immigrated Romanies back to Romania, and

the Commission officially called for a better implementation and utilization of EU anti-discrimination legislation. In addition, it also announced further extension proposals for the EU anti-discrimination framework based on EC Treaty Article 13 (Treaty Establishing the European Community) (c.f. Commission of the European Communities 2.7. 2008, p. 4).

With regard to improvement of the EU anti-discrimination legislation, there are obviously many starting points. Mainstreaming is a principle that should be as much utilized against any form of discrimination, as it is successfully utilized in the field of sexual discrimination. As long as national law contradicts EU anti-discrimination legislation, as it is the case in the UK (c.f. chapter 3.2.3), all endeavors towards Romani social inclusion are in vain. Furthermore, the litigation possibilities in cases of racial discrimination have to be decisively reformed. It should be possible for trade unions and corporations to file and support litigations in the name of anti-discrimination action. Success in this area is generally humble, when put into perspective, despite the complementary encouraging rulings of the European Court of Human Rights. Only 500 housing complaints were filed between the years 2000 and 2009 by Romani people on charges of discrimination, and the suspiciously small number of 35 complaints found a positive result, as the European Union Agency on Fundamental Rights found out (c.f. chapter 4.2.5).

Almost completely missing is a Union-wide discourse about the history of persecution and discrimination against the Romani people, which peaked in the genocide of the National Socialists. Anti-discrimination legislation in the form of EU Directives that need to be translated into national law can only be efficient if a generally larger amount of understanding and empathy for Romani people and their history of persecution develop. In the face of many low-ranked officials who likely hold a wide range of negative stereotypes about "Gypsies" like the general population, probably seeing them as a group of thieves and work-shy outlaws and aliens, anti-discrimination law will yield little progress for the case of Romani social and economic inclusion. While blunt and unveiled anti-Semitism is a form of hatred probably frowned upon by a majority of EU citizens, anti-Gypsyism is still a form of racism challenged by a comparatively small minority, mainly out of ignorance for the subject among Europeans.

Romani history of discrimination and persecution should become a part of European history school and text books, as it is the case with European history about the persecution of the Jews. In the long term, this would decisively contribute to the successful implementation of anti-discrimination law and policies in favor of Romani people on the national and in particular the municipal level.

In addition, social policies with the goal of Romani inclusion should be in favor of all poor people in certain areas, to avoid social tensions. A de-ethnicizing of the whole subject might turn out to be of great advantage for all participants of the subject matter.

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Abstract

The diploma thesis at hand is the attempt to evaluate the impact of EU anti-discrimination law. It starts with an examination of the history and structure of anti-Gypsyism, a particular form of racism which leads to the discrimination and social exclusion of the Romani people from the beginning of their immigration to Europe. In the main part of this thesis, two dimensions will be examined. First, how EU anti-discrimination law evolved since the beginning of the European Communities, which will give an idea about which actors had what kind of interest in developing EU anti-discrimination law. It will be revealed that the implementation of the 2000 Racial Equality Directive was triggered by the political success of right extremism in European parliaments, and not the plight of discriminated ethnic/racial minorities. Second, an examination of anti-Gypsy discrimination and Romani social exclusion within the European Union, to find out whether the implementation of EU anti-discrimination law has led to a change of the discriminatory treatment of Romanies in the EU. It will turn out that social exclusion and anti-Gypsy discrimination hardly changed since the implementation of the 2000 Racial Equality Directive, which is not unexpected in face of the deep-rootedness of anti-Gypsyism in Europe.

Die vorliegende Arbeit ist der Versuch, den Einfluss der EU-Antidiskriminierungs-gesetzgebung zu evaluieren. Sie beginnt mit einer Untersuchung der Geschichte und Struktur von Antiziganismus, eine spezielle Form von Rassismus, die zu Diskriminierung und sozialer Exklusion von Roma und Sinti führt. Im Hauptteil dieser Arbeit werden zwei Dimensionen untersucht. Erstens, wie sich die EU-Antidiskriminierungsgesetzgebung seit dem Beginn der Europäischen Gemeinschaften entwickelt hat, was eine Vorstellung davon vermittelt, welche Interessen welche Akteure in der Entwicklung von EU-Antidiskriminierungsgesetzgebung verfolgten. Es wird sich herausstellen, dass die Implementierung der 2000er Richtlinie zur Rassengleichheit durch den Erfolg von Rechtsextremismus in Europäischen Parlamenten ausgelöst wurde, und nicht durch das Elend diskriminierter, ethnischer und rassistischer Minoritäten. Zweitens, eine Untersuchung antiziganischer Diskriminierung und sozialer Exklusion der Roma und Sinti innerhalb der Europäischen Union, um herauszufinden, ob die Implementierung der EU-Antidiskriminierungsgesetzgebung zu einer Veränderung bezüglich der diskriminierenden Behandlung von Roma und Sinti in der EU geführt hat. Es wird sich weiterhin herausstellen, dass sich soziale Exklusion und antiziganische Diskriminierung seit der Implementierung der 2000er Richtlinie zur Rassengleichheit kaum verändert haben, was keine Überraschung angesichts der tiefen Verwurzelung von Antiziganismus in Europa ist.

Curriculum Vitae

Lars Dietrich
1983/04/06 Frankfurt am Main / Germany

Universities

July 2009	University of Haifa, Israel: Hebrew – Intensive Summer Ulpan
February 2009	University of Haifa, Israel: Hebrew – Intensive Winter Ulpan
August 2007 to December 2007	University of Illinois at Urbana-Champaign, USA: Political Science, Sociology and Hebrew
July 2006	Rothberg International School / Hebrew University of Jerusalem, Israel: Middle Eastern Studies
Since September 2004	University of Vienna, Austria: Political Science
September 2002 to June 2003	Vienna University of Economics and Business Administration, Austria: Business Administration
September 2001 to June 2002	Technical University of Vienna, Austria: Information Technology

Obligatory Civil Service

October 2003 to September 2004	Caritas Karwanhaus, Vienna: Home for Refugees and Asylum Seekers
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Highschools

July 2001	BRG Anton Kriegergasse: A-levels
September 1998 to June 2001	BRG Anton Kriegergasse: Highschool with focus on Natural Sciences
September 1995 to June 1998	BRG / Sportgymnasium Maria Enzersdorf: Highschool with focus on Competitive Sports
September 1993 to June 1995	AHS Untere Bachgasse Mödling

Elementary Schools

March 1992 to June 1993	Volksschule Brunn am Gebirge, Lower Austria / Austria
September 1989 to February 1992	Grundschule Dornberg, Bielefeld / Germany

Occupational Experience

Since May 2009	Caritas Karwanhaus, Vienna: Social Worker at Caritas Home for Refugees and Asylum Seekers
September 2008	Campaigning for LIF (Liberal Party of Austria) at the Austrian National Elections 2008
August 2008	Political Department Badische Zeitung (Daily Newspaper) in Freiburg/Germany
August 2004 to June 2007	Caritas Haus Braunspergengasse, Vienna: Social Worker at Caritas Home for Refugees and Asylum Seekers
September 2001	IFABO Exhibition, Vienna: Customer Advisory for IBM
September 2001, September 2002 and September 2003	Raiffeisenkasse Mödling, Austria: Internship at Bank

English Courses in the USA

August 1996	Inlingua San Diego / California: intensive two-week course in Conversational English
July 2000	Four weeks – EF language course in Thousand Oaks / California

Scholarships

For the Academic Year 2011-2012	Fulbright Scholarship Austria
Fall Semester 2007	Joint Study Exchange Student Scholarship for one semester at the University of Illinois at Urbana Champaign
July 2009	Scholarship from the Israeli Ministry of Foreign Affairs for a one month intensive Hebrew Course at Haifa University
February 2009	Financial Support from VEWISTA (Austrian-Israeli Organization)

Publications

1. Thomas Schmidinger/Dunja Larise (Hrg.): Zwischen Gottesstaat und Demokratie, Handbuch des politischen Islam (**Between Theocracy and Democracy, Handbook of Political Islam**), Deuticke, Vienna 2008

Contribution: One Chapter about the Islamistic Organization Hizb-ut Tahrir in Austria.

2. Ines Kälin Schreiblehner/Herwig Schinnerl (Hrg.): Von Bijelina nach Eibesthal – Eine Studie zur Situation der Roma im niederösterreichischen Weinviertel (**From Bijelina to Eibesthal – A Study about the Situation of Roma People in Lower Austria Weinviertel**), HVM, Munich 2010

Contribution: A Chapter about History and Structure of anti-Gypsyism in Europe.

3. Lars Dietrich: Libanonkrieg Sommer 2006: Diskursvergleich unter Studierenden Jerusalem - Wien (**Lebanon War 2006: Discourse Comparison among students Jerusalem – Vienna**), Vienna 2006,
Online available at <http://www.gegendenantisemitismus.at/17012007.php> and www.juedische.at
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Publications in Progress

One Chapter about the Yezidi minority in Kurdistan; collected volume by Thomas Schmidinger about Kurdistan, expected to be published in spring 2011

Extracurricula Activities

1. Founding Member of the “Forum for Emancipatory Islam”, a Non-Profit Organization for the Development and Support of Progressive Islam
2. Member of Or Chadasch, Movement for Progressive Judaism
3. Player of the Vienna Wanderers, Austrian Baseball League Champion 2009